Vol. I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 732 42

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE PITTSBURGH STEAMSHIP COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 5, 1950

CERTIORARI GRANTED MAY 8, 1950

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United States of America
Before the
National Labor Relations Board

EIGHTH REGION.

CASE NO. 8-C-1696.
DATE FILED July 2, 1945.

IN THE MATTER OF
THE PITTSBURGH STEAMSHIP COMPANY,
and
NATIONAL MARITIME UNION OF AMERICA (CIO).

AMENDED CHARGE (BOARD'S EXHIBIT 1A).

(Dated July 2, 1945.)

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that The Pittsburgh Steamship Company at Rockefeller Building, Cleveland 13, Ohio employing 2250 workers in Great Lakes shipping has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that on or about April 23, 1944, it, by its agents, officers and representatives, terminated the employment of Howard Shartle, an able-bodied seaman, because of his membership and activities in behalf of the National Maritime Union of America (CIO), a labor organization, and at all times since such date it has refused and does now refuse to employ the above-named employee.

By the acts set forth in the above paragraph, and by other acts and conduct, it, by its officers, agents and representatives, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

NATIONAL MARITIME UNION OF AMERICA (CIO)

By: FRANK JONES, *Port Agent*

1000 Walnut Ave.,
Cleveland 14, Ohio.
MA. 8217

Subscribed and sworn to before me this 2d day of July, 1945. At Cleveland, Ohio.

LOUIS S. BELKIN, Attorney
8th Region, NLRB.

NOTICE OF HEARING (BOARD'S EXHIBIT 1B).

(Dated July 10, 1945.)

PLEASE TAKE NOTICE that on the 26th day of July, 1945, at 10:00 a.m. Eastern War Time, in Room 702, Public Square Building, Cleveland, Ohio, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof.

PLEASE TAKE NOTICE that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exer-

cise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Eighth Region on this 10th day of July, 1945.

WALTER E. TAAG,
Regional Director,
National Labor Relations Board.

AFFIDAVIT AS TO SERVICE (BOARD'S EXHIBIT 1C).

(Service Made July 10, 1945.)

STATE OF OHIO,
COUNTY OF CUYAHOGA, ss.

I, Audrey Kaminsky, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 8th Region at Cleveland, Ohio; on the 10th day of July, 1945, I served by postpaid registered mail, bearing Government frank, a copy of the Complaint and Notice of Hearing in the above matter to the following named persons, addressed to them at the following addresses:

The Pittsburgh Steamship Company
Rockefeller Building
Cleveland, Ohio

National Maritime Union of America (CIO)
1000 Walnut Avenue
Cleveland, Ohio

Attention: Frank Jones, Port Agent

AUDREY KAMINSKY.

Subscribed and sworn to before me this 23rd day of July, 1945.

SUSAN A. MIZENKO,
Designated Agent
National Labor Relations Board.

(Registry Receipts omitted)

COMPLAINT (BOARD'S EXHIBIT 1D).

(Issued July 10, 1945.)

It having been charged by National Maritime Union of America (CIO), 1000 Walnut Avenue, Cleveland 14, Ohio, hereinafter called the Union, that The Pittsburgh Steamship Company, Rockefeller Building, Cleveland 13, Ohio, hereinafter called the Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act, the National Labor Relations Board, hereinafter called the Board, by the Regional Director for the Eighth Region, as agent for the Board, designated by the Board's Rules and Regulations, Series 3, as amended, hereby issues its Complaint and alleges as follows:

1. Respondent is a corporation organized under and existing by virtue of the laws of the State of West Virginia with its home office and principal place of business at Cleveland, Ohio. It is a wholly owned subsidiary of the United States Steel Corporation. It has at all times herein mentioned continuously engaged in the operation of bulk freight vessels on the Great Lakes, carrying bulk freight such as coal, iron ore and limestone on behalf of the United States Steel Corporation to and from various ports on the Great Lakes. Respondent is engaged in commerce within the meaning of the National Labor Relations Act.

2. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

3. From on or about the 15th day of December, 1943, to on or about the 17th day of June, 1944, Respondent, through its agents and employees, engaged in a plan and continuous course of conduct which interfered with, restrained and coerced its employees in the exercise of their rights to self-organization, to form, join or assist a labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection.

4. The Respondent, by its officers, agents and employees, since on or about March 15, 1944, has interfered with, restrained and coerced its employees in the exercise

of their rights guaranteed them in Section 7 of the Act by engaging in the following acts and conduct:

(a) Urging, persuading and warning its employees to refrain from joining or retaining membership in the Union.

(b) Making disparaging remarks to its employees concerning the advantages of union organization.

(c) Threatening those who joined the union with dismissal.

(d) Threatening a reduction of wages if the union succeeded in winning a representation election.

(e) Threatening the loss of seniority rights if the union succeeded in winning a representation election.

5. The Respondent, while engaged in the operations hereinabove described, discharged or laid-off Howard Shartle on April 23, 1944, and has ever since failed and refused to reemploy him. Said discharge and refusal to reinstate were because he engaged in concerted activities and joined and assisted the Union, and for the purpose of discouraging membership in the Union.

6. By the acts set forth in Paragraphs 3, 4 and 5, above, and each of them, the Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed them in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

7. By the acts set forth in Paragraph 5, above, the Respondent did discriminate and is discriminating in regard to the hire and tenure of employment and the terms and conditions of employment of the said Howard Shartle, and did discourage and is discouraging membership in the Union and did, therefore, and is, therefore, engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

8. The acts of the Respondent set forth in Paragraphs 3, 4 and 5, above, occurring in connection with the operations of the Respondent described in Paragraph 1, above, have a close, intimate and substantial relation to trade,

traffic and commerce among the several states and tend to lead to labor disputes burdening or obstructing commerce and the free flow of commerce.

9. The aforesaid acts of the Respondent set forth in Paragraphs 3, 4 and 5, above, and each of them, constitute unfair labor practices within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act.

WHEREFORE, the National Labor Relations Board, this 10th day of July, 1945, issues its Complaint against Pittsburgh Steamship Company, the Respondent herein.

WALTER E. TAAG,
Regional Director,
National Labor Relations Board,
Eighth Region.

ANSWER TO COMPLAINT (BOARD'S EXHIBIT 1E).

(Filed July 20, 1945.)

The Pittsburgh Steamship Company, hereinafter called the respondent, answers the charges of the National Maritime Union of America, and the complaint filed by The National Labor Relations Board, as follows:

1. Respondent admits that it is a corporation organized under and existing by virtue of the laws of the State of West Virginia, with an office and place of business at Cleveland, Ohio; that it is a wholly owned subsidiary of the United States Steel Corporation and is engaged as a private carrier in the operation of bulk freight vessels on the Great Lakes, carrying bulk freight such as coal, iron ore and limestone to and from various ports on the Great Lakes and that it is engaged in commerce within the meaning of the National Labor Relations Act; respondent denies each and every other allegation contained in Article 1 of said complaint, not heretofore admitted.

2. Respondent admits the allegations contained in Article 2 of said complaint.

3. Respondent denies each and every allegation contained in Article 3 of said complaint.

4. Respondent denies each and every allegation contained in Article 4 of said complaint.

5. Respondent admits that one Howard Shartle was paid off on or about April 23, 1944, but denies each and every other allegation contained in Article 5 of said complaint.

6. Respondent denies each and every allegation contained in Article 6 of said complaint.

7. Respondent denies each and every allegation contained in Article 7 of said complaint.

8. Respondent denies each and every allegation contained in Article 8 of said complaint.

9. Respondent denies each and every allegation contained in Article 9 of said complaint.

WHEREFORE, your respondent prays that said complaint be dismissed.

PITTSBURGH STEAMSHIP COMPANY,
By A. H. FERBERT,
President.

(Verification omitted.)

ORDER DESIGNATING TRIAL EXAMINER.

(Entered July 26, 1945 by Frank Bloom, Chief Trial Examiner.)

IT IS HEREBY ORDERED that Arthur Leff act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations Series 3, as amended, of the National Labor Relations Board.

Dated, Washington, D. C., July 26, 1945.

FRANK BLOOM,
Chief Trial Examiner.

(Seal)

TRANSCRIPT OF PROCEEDINGS BEFORE THE NATIONAL LABOR RELATIONS BOARD.

(Filed August 2, 1945.)

702 Public Square Building,
Cleveland, Ohio,
Thursday, July 26, 1945.

Pursuant to notice, the above-entitled matter came on for hearing at 10 A. M.

BEFORE:

ARTHUR LEFF, ESQ., Trial Examiner.

APPEARANCES:

L. C. HINSLEA, ESQ.,
LUCIAN Y. RAY, ESQ.,

1970 Union Commerce Building, Cleveland, Ohio, appearing on behalf of the Pittsburgh Steamship Company.

LOUIS S. BELKIN, ESQ.,

Cleveland, Ohio, appearing on behalf of the National Labor Relations Board.

HERMAN ROSENFELD, ESQ.,

291 Broadway, New York City, New York, appearing on behalf of the National Maritime Union of America, CIO.

Trial Examiner Leff: The hearing is in order. This is a formal hearing before the National Labor Relations Board in the matter of Pittsburgh Steamship Company and National Maritime Union.

The Trial Examiner appearing for the National Labor Relations Board is Arthur Leff. I will ask counsel to state their appearances for the record.

Mr. Belkin: Louis S. Belkin, appearing for the Board.

Trial Examiner Leff: For the Respondents?

Mr. Hinslea: L. C. Hinslea and L. Y. Ray.

Trial Examiner Leff: For the Charging Union?

Mr. Rosenfeld: William L. Stanard by Herman Rosenfeld.

Trial Examiner Leff: Are there any other appearances? I hear no response.

The official reporter makes the only official transcript of these proceedings. Citations in briefs and arguments based upon the record directed to the Trial Examiner or to the Board must cite the official transcript in all references to the record. The Board will not certify any transcript other than the official transcript for use in any court litigation.

It may become necessary to make corrections in the record during the hearing. If so, the party desiring the correction will submit the suggested correction to the other party or parties in writing. When this is received with written approval, it will be submitted to the Trial Examiner. In the event the parties are unable to agree upon proposed corrections, the Trial Examiner will then consider motions to correct the record or may, upon his own motion, order corrections made. If the parties have been unable to agree upon such corrections upon the close of the hearing, but have entered into a stipulation concerning such matters after the close of the hearing but before the transfer of the case to the Board, such stipulations or motions should be addressed to the Trial Examiner in care of the Chief Trial Examiner in Washington. After the transfer of the case to the Board all such communications should be directed to the Board itself, inasmuch as by such transfer to the Board, the Trial Examiner's connection with the case ceases.

Concise statements of reasons for motions or objections will be permitted, but the Trial Examiner may go off the record for the purpose of hearing extended argument.

Since this is a formal hearing, we shall maintain the dignity and decorum which usually accompanies such proceedings.

Off-the-record argument will not be included in the official transcript unless an order to that effect be made by the Trial Examiner, either upon the request of any of the parties or upon his own motion. All requests to go off the record are to be directed to the Trial Examiner and not the official reporter.

I will now instruct the reporter to take down everything that is stated here unless the Trial Examiner spe-

cifically directs that we go off the record. I prefer that there not be any off-the-record discussion of issues. If you want to discuss stipulations or matters pertaining to the issues, I prefer that you ask for a recess rather than request off-the-record discussion.

The Trial Examiner will allow an automatic exception to all adverse rulings and upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

Five copies of all pleadings submitted during the hearing are to be filed with the Trial Examiner.

All Exhibits offered in evidence shall be in duplicate. Any exhibits that are received are received with the understanding that the duplicates be filed, if not at that time, before the close of the hearing. If when I have closed the hearing there are no duplicates for a particular exhibit, it will be understood that any ruling receiving the exhibits may be rescinded and the exhibits rejected.

At the close of the hearing the parties may, if they so request, argue orally before the Trial Examiner, or, if at such time the Trial Examiner believes that oral argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved, he may request oral argument from the parties, and will feel free to discuss with and ask questions of the counsel or representatives of the parties with respect to contentions as to the issues, the facts and legal principles involved.

As a usual rule, I prefer to hear oral argument at the close of the hearing. I am making this announcement now so as we approach the end of the hearing you may consider that possibility, and guard yourselves accordingly.

Oral argument will be included in the stenographic report of the hearing.

Any party shall be entitled, upon request made before the close of the hearing, to file a brief with the Trial Examiner, who, before the close of the hearing, will then indicate the time within which such briefs may be filed. Five copies of such briefs shall be directed to the Trial Examiner in care of the Chief Trial Examiner in Washington.

Are you ready to proceed?

Mr. Belkin: Yes.

At this time I would like to offer what has been marked for identification, Board's Exhibit 1-A. It is the charge signed by Frank Jones of the National Maritime Union, on July 2, 1945.

Board's Exhibit 1-B for identification, Notice of Hearing signed by Walter E. Taag, Regional Director of the Board, on July 10, 1945.

Board's Exhibit 1-C, which is an Affidavit of Service of the said Notice of Hearing signed by an agent of the Board, Audrey Kaminsky, on July 23, 1945. Attached thereto are return receipts.

Board's Exhibit 1-D is the complaint in this case signed by Walter E. Taag, Regional Director of the Board, on July 10, 1945.

Board's Exhibit 1-E is the answer to the complaint, signed by A. H. Ferbert, President of the Company, July 20, 1945.

(Thereupon the documents above referred to were marked Board's Exhibits Nos. 1-A to 1-E, for identification.)

Mr. Belkin: I now offer these in evidence.

Trial Examiner Leff: Is there any objection? Hearing none they will be received.

(The documents heretofore marked Board's Exhibits Nos. 1-A to 1-E for identification were received in evidence.)

Mr. Belkin: May we go off the record?

Trial Examiner Leff: Yes. Off the record.

(Discussion had off the record.)

Trial Examiner Leff: On the record.

Mr. Belkin: At this time, Mr. Examiner, I would like to read into the record two stipulations to which the parties have agreed.

First, it is hereby stipulated and agreed by and between the parties hereto that the Pittsburgh Steamship Company is a corporation organized under and existing by virtue of the laws of the State of West Virginia, with its principal office in Cleveland, Ohio. It is a wholly owned subsidiary of the United States Steel Corporation. It is engaged as a private carrier in the operation of bulk freight vessels on the great lakes, carrying bulk freight such as coal, iron ore

and limestone to and from various ports on the great lakes. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

Mr. Hinslea: Mr. Belkin, I didn't catch that word "principal office." I would like to have that eliminated.

Mr. Belkin: Is it your home office?

Mr. Hinslea: No.

Mr. Belkin: With an office in Cleveland, Ohio.

Trial Examiner Leff: Do you want to include in that stipulation the approximate value of the business? Do you have the figures available?

Mr. Hinslea: I can't give it to you in dollars and cents.

Trial Examiner Leff: Just roughly. Say in excess of a certain amount.

Mr. Hinslea: It is in excess of a million dollars.

Trial Examiner Leff: In other words, you ship annually merchandise valued in excess of a million dollars?

Mr. Hinslea: Yes.

Mr. Belkin: We agree then the stipulation includes that statement.

The second stipulation is:

It is stipulated and agreed that the National Maritime Union of America, affiliated with the CIO, is a labor organization within the meaning of the National Labor Relations Act.

Trial Examiner Leff: The stipulations are approved.

Mr. Belkin: I would like to call Joseph Babin, if the Examiner please.

BOARD'S WITNESSES.

JOSEPH BABIN, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: Please be seated, and give your full name and address to the reporter.

The Witness: Joseph Babin, 6116 So. Campbell Avenue, Chicago, Illinois.

Trial Examiner Leff: How do you spell your last name?

The Witness: B-a-b-i-n.

DIRECT EXAMINATION.

Q. (By Mr. Belkin): Were you ever employed by the Pittsburgh Steamship Company, Mr. Babin? A. Yes; I was.

Q. What was the term of your employment with that Company? A. From the 22nd of March, until the 13th of June, 1944.

Q. Had you worked for them previously at any time? A. Yes; I did.

Q. Directing your attention to your employment in 1944, will you tell us on what ship you served? A. On the Peter A. B. Widener.

Q. What was your job for that ship? A. A. B. deck watch.

Q. Are you a licensed A. B.? A. Yes; I am.

Q. How long have you been a licensed A. B.? A. Since 1937.

Q. Are you certified by the United States Government as such? A. Yes; I am.

Q. Can you tell us who your supervisory officers were aboard that ship? A. Captain Lehne; 1st Mate Gus Eckstrom; the 2nd and 3rd mate I don't remember their names. Chief Engineer, Chief Hungar, and the 1st, 2nd and 3rd assistant engineers I do not remember their names.

Q. Do you generally call them by their name, or 1st, 2nd, 3rd assistant? A. By their respective titles.

Q. Were you a member of the National Maritime Union at the time you boarded this ship? A. Yes.

Q. Did you hold any position with the Union? A. Yes; I was an organizer.

Q. And did you engage in the organizational activities on behalf of your Union while aboard that ship in 1944? A. Yes; I did.

Q. Will you tell us, please, what your activities consisted of? A. Organizing, sending the members up into the Union, distributing literature, and speaking of the Union, speaking up the Union and telling them the benefits of the Union.

Q. While you were aboard that ship did you at any time discuss any matter involving the Union with any of the licensed personnel? A. Yes; I did.

Q. With whom? A. With the Captain, 1st Mate, and the Chief Engineer.

Q. Directing your attention to the conversations with the Captain, will you tell us when and where these conversations occurred? A. The first conversation that I had with the Captain was in the month of April. I was called up into the Captain's room. The Captain said, "I understand you are an organizer aboard this ship." I said that I was. He said that—he said—is it all right to go ahead?

Trial Examiner Leff: Yes, go ahead.

A. (Continuing) He said, "The Company does not hire any Union men aboard any of their ships." He also said that I was interfering with the men's work. I replied that I wasn't. He said, "Well, you are bothering the men while they are working, and talking unionism to them." I said, "Captain, I am not bothering any of the fellows while they are working." I said, "When I am on watch, or when they are on watch I do not bother them at all. The only time I speak to them is when I am off watch, or they are off watch." Then he said, "You know you can't very well force anybody into the Union." I said, "Captain, we do not force anybody into the Union. If they want to join the Union they will do so."

Q. Was anyone else present at the time? A. No; there was no one else present.

Q. Were you speaking to the men aboard the ship during working hours? A. No; I was not.

Q. At any time? A. At no time.

Q. Did you have any other conversation with Captain Lehne? A. Yes; I did.

Q. When did this occur? A. About two weeks later he called me up to his room.

Q. Was anyone else present? A. There was no one else present.

Q. What if anything did Captain Lehne say to you, and what if anything did you say to him? A. Captain Lehne said, "The men are still being interfered with by you talking to them at all times. They are not doing their jobs." Again, I told him—I said, "Captain, I believe the last time I was up here I told you I did not interfere with their work at all."

Q. Did you thereafter hold any other conversations with the Captain on the matter involving the Union? A. I did.

Q. When did this occur? A. A short time after that, a period of five or six days, going up the lake on Lake Superior, on our way to Two Harbors. The Captain again called me into his room. He said, "Joe, will you please try and see that these fellows get their work done. I have a complaint that the men are not doing their work." I said, "Captain, the men are doing their work. If anybody told you that they are not, that is a false statement." I said, "The men are doing their work. They are not being interfered with." He said, "Well, by your talking Union to them at all times, day and night," he said, "they can't get their work done." Again, I told him that I do not interfere with men while they are working. It is only when they are not working, and I am not working that I discuss Union with them.

Q. Had the work on board ship slackened in any way during your stay on board the ship all this time, Mr. Babin? A. No; it did not slacken.

Q. Were you responsible in any way for the work of the men on the deck? A. Yes; I was.

Q. Will you explain that to us, please? A. When the watchman would be on lookout, or when he was doing some other duties, I, in turn, would be in charge of the deck hands.

Q. Your position then was that of deck watch? A. Deck watch; yes, sir.

Q. You testified just a few minutes ago, Mr. Babin, that you also had some conversation with the 1st Mate. Will you tell us when and where those occurred? A. About two trips after we left our winter berth. We were going up on Lake Superior when I was told to secure the anchor claws. I was in the windlass room securing the claws when the 1st Mate came up to me, and stood alongside of me for a few moments. Suddenly he pushed me aside. He says, "All you God damn Union men don't know how to do anything." He said, "Go on and get your ass out on deck with the rest of them." I didn't say anything. I just left the anchor claws to him, and I went out on deck.

Q. Have you been criticised at any time previous to this incident for your work on anchors? A. This was the first time I ever had been criticised in regards to my work. After all, I have been an A. B. for seven years, and nobody

has ever said anything to me about not being able to do my job.

Q. You said you had another conversation with the 1st Mate? A. I did.

Q. When did that occur? A. It was on deck one day while putting tarps on the hatches. A deckhand and I were on the edge of the hatch—

Q. Just a minute. Was this shortly after or before the first incident? A. Oh, this was the second incident.

Q. Now, how long after the first one did it occur? A. It occurred about one trip, which would be about one week.

Q. Can you fix the month, roughly, to the best of your recollection for us? A. Well, I'd say at the end of April.

Q. Thank you. Go ahead, Mr. Babin. A. The deckhand and I were spreading a tarp, evening her up, getting her ready to batten down, when the 1st mate came alongside of me—I didn't see him. I didn't know he was alongside of me until he got alongside of me. Without saying anything, he pulled the tarp out of my hands and pushed me aside. I lost my balance, and I fell on the hatch. He said, "You better get your ass over on the other hatch with the rest of the fellows." I got up and went over to the other hatch, without saying anything.

Q. Do you recall the name of the deckhand? A. No; I don't.

Q. Was anyone else present at the time? A. The other two deckhands were on the other side of the hatch.

Q. Do you recall their names? A. No; I don't.

Q. Did you have any conversations with the Chief Mate? A. Yes; I did.

Q. Will you tell us when they occurred? A. One morning when I came on watch, I went back aft to start scrubbing the cabin.

Q. Just a minute, Mr. Babin. Can you fix the time of that for us? A. Yes; I happened to be on the 10 to 2 watch. I relieved the 6 to 10 watch at 10:15 in the morning—

Trial Examiner Leff: On what day was it with respect to the incident you related last?

The Witness: It was around two weeks.

Trial Examiner Leff: Two weeks after that?

The Witness: Two weeks after; yes.

Q. (By Mr. Belkin): Tell us what happened, if anything. A. I went back aft to relieve the other deck watch,

and continued scrubbing the cabin from where they left off. The Captain came down and told me I had better go over the cabin and do what the first watch had already done. It wasn't satisfactory to the Captain. We did. And about—

Q. Now, who do you mean by "we"? A. The deckhands and I.

Q. How many deckhands were there? A. Three.

Q. And do you recall their names? A. No; I don't.

Q. Go on. A. The 1st Mate came aft, about 30 minutes later, and he said, "This is where the last watch started." He said, "What have you been doing all this time?" I told him that the Captain ordered me to start the cabin all over again. He said, "Never mind the Captain." He said, "I am giving orders on this boat. I am the boss here." He said, "If that is the way you God damned Union men are going to do this work, you might as well pile off." I didn't say anything. That was the end of that conversation.

Q. You testified earlier that you also had a conversation with the Chief Engineer? A. Yes; I did.

Q. Will you tell us the circumstances surrounding that conversation, Mr. Babin? A. One day I was putting water into the tanks—

Q. You say one day. Can you fix the month, perhaps of the voyage for us? A. Well, this was quite some time—I should say in the month of May. The exact date I don't remember.

Q. Proceed. A. I went down to the engine room. The Chief Engineer was down there at the time. I told the Chief Engineer to turn off a certain tank. The Chief Engineer pointed his finger at me, and he said, "You keep your ass out of the engine room. And another thing," he said, "I want you to keep away from my men." He said, "You are going into their rooms. You are bothering them. You are keeping them from their rest. The men that are sleeping, you wake up, and start talking Union to them." I said, "Chief," I said, "I do not enter anybody's room unless I am invited in." He said, "Well, that is what I am telling you now. I want you to keep away from those men." He said, "I don't want you to talk to them at all." I said, "Well, Chief," I said, "if the men want to talk to me, I will talk to them regardless of where we are at." I said, "If

we are in the mess room, or in the galley, during noon mealtimes, if the men want to talk to me I will talk to them. After all, I am eating with the men. I live with the men, and I eat at the same table with them. If they want to talk to me and ask me questions, I will answer them." The Chief Mate said—he said, "Never mind coming down here"—

Q. You don't mean the Chief Mate? A. I beg your pardon. I mean the Chief Engineer. He said, "Never mind coming down in the engine room anymore. Just stay out of here." I said, "Well, I have to tell you what tanks to turn off." He said, "You go up in the pilot house and call me up if they want any tanks turned off." I said, "All right, Chief, if that is the way you want it, it is all right with me."

Q. Will you explain for us, Mr. Babin, just what your duties were in connection with the ballast tanks? A. Well, I would put water into the ballast tanks, or take water out of the ballast tanks. The Captain is the one that calls up the Engineer and tells him when to put water in, and when to take water out. All I would have to do is sound the tanks to see that the right amount of water gets into the tanks, or the right amount of water goes out of the tanks.

Q. After you sound the tanks what is the next step in your job? A. When I have that certain amount of water in the tanks, I would then go down below in the engine room and tell the Engineer what tanks to shut off, and mark the board that is down in the engine room.

Q. In regard to the procedure suggested by the Chief Mate of calling from the pilot house, will you tell us, if you can, what difference there would be in that method from yours, if there would be any saving or loss of time? A. Mr. Belkin, you mean the Chief Engineer?

Q. Yes. A. Well, when you sound your tanks, you have to go down to the engine room and mark the blackboard. That is one thing you must do so the engineers know how much water is in the tanks.

Q. And if the job was done via the telephone from the pilot house there would be no marking— A. There would be no marking down in the engine room.

Q. Is that a necessary procedure? A. It is a necessity.

Q. Why? A. The engineers have to know how much water is in the tanks. It has—I am a forward end man, not

an aft man. It has something to do with the water that the oiler has to take care of also.

Q. You are familiar with the work of an A. B. aboard ship? A. Yes; I am.

Q. You sail for the Pittsburgh Steamship Line—you sailed for the Pittsburgh Steamship Line for several years, I understand? A. Yes; I did.

Q. Could you tell us what the normal complement, or deck complement, of A. B.s is aboard a Pittsburgh Steamship? A. It's eight A. B.—is that what you want to know, how many A. B.s they carry?

Q. Yes. A. Eight A. B.s.

Q. That is the usual procedure? A. Yes.

Q. What are the ratings of the A. B.s? A. A. B. deck watch, watchman and wheelsman. They are allowed to carry one ordinary deck watch.

Q. Is that a fixed rule, to your knowledge, or just a common procedure? A. It is what the certificate calls for.

Q. Well, to your knowledge, what is the regular practice on board these ships?

Mr. Hinslea: If the Examiner please, it isn't a matter of practice, it is a matter of Government regulation. The certificate will speak for itself. This man is not qualified to speak as to the—

Mr. Belkin: I will withdraw it.

Trial Examiner Leff: He can observe what he observed.

Mr. Belkin: I will withdraw the previous question. As to what he observed as to regular practice. I don't care what his knowledge is about the certificate. I agree with Mr. Hinslea. The certificate will speak for itself. But I do feel that the last question is proper.

Trial Examiner Leff: Yes. I think that is—I think that merely calls for the observation of the witness. Objection overruled.

Mr. Hinslea: I am objecting to the form of the question. To the practice.

Trial Examiner Leff: Let me put the question. I will simply rephrase the question. Your objection is overruled.

Based on your observation, what was the practice with respect to the matter that Mr. Belkin inquired about.

Q. (By Mr. Belkin): That is the number of A.B.s normally aboard a lake steamer,—employed by the Pittsburgh Steamship.

Trial Examiner Leff: How many A.B.s did you observe aboard the Pittsburgh steamships?

Mr. Hinslea: He answered that.

Trial Examiner Leff: Well, you said you observed eight A.B.s as a usual rule; is that correct?

The Witness: Well, this particular ship that I was on only had four A.B.s.

Trial Examiner Leff: That was in 1944?

The Witness: Yes.

Trial Examiner Leff: All right. Will you continue, please.

Q. (By Mr. Belkin): While you were on board ship, did you at any time distribute literature sent you by the National Maritime Union? A. Literature sent me by the National Maritime Union?

Q. Yes. A. Any literature that was sent to me by the National Maritime Union I distributed.

Q. Was it the custom of the National Maritime Union to send all its literature to you, as its organizer aboard that ship? A. Yes; it was.

Q. To your knowledge did the National Maritime Union send any literature aboard your ship without informing you? A. I am sorry, but I don't recall.

Q. While you were aboard ship did you at any time see the pamphlets entitled: "NMU fights Jim Crow." A. Yes; I did.

Q. How many copies of that pamphlet did you see? A. I seen four copies of the pamphlet.

Q. Where did you see these four copies? A. There was one in the wheelsman's room, and one in the watchman's room, one in the deck watch's room, and there was one in the deckhand's room.

Q. Did you bring those copies of "NMU fights Jim Crow" aboard the ship, yourself? A. No; I did not.

Q. Do you know who brought them aboard ship? A. No; I don't.

Q. Do you know in any way how they got aboard ship? A. To my recollection they were mailed aboard the ship.

Q. Did you see the envelope in which these pamphlets came? A. Yes; I have seen the envelope that they were mailed in.

Q. Can you describe that envelope to us? A. The envelope was addressed to: Wheelsman on the Peter A. B. Widener.

Q. Was it postmarked? A. It had a Detroit postmark on the envelope.

Q. Did it have a return address on the envelope? A. No; there was no return address.

Q. Did it bear an NMU stamp on it? A. No; there was no NMU stamp on it.

Q. What is the general custom as regards the stamp, in regard to NMU literature? A. All NMU literature has—all NMU literature that is sent out has our stamp on it.

Trial Examiner Leff: Are you finished, Mr. Belkin?

Mr. Belkin: Yes.

DIRECT EXAMINATION.

Q. (By Mr. Rosenfeld): Mr. Babin, how many years have you been sailing on Pittsburgh boats? A. I have been sailing on Pittsburgh boats for six years.

Q. In the deck department? A. In various departments. Deck and galley.

Q. All right. Now, have you sailed on Pittsburgh boats before the war? A. Yes.

Q. When was the first time you went on a Pittsburgh boat? A. 1930.

Q. Now, you are familiar then with the ratings on these Pittsburgh boats? A. Yes; I am.

Q. How many wheelsmen do these boats carry? A. Three wheelsmen.

Q. What are their certificates of service? A. Certificate of service?

Q. Yes. Are they A.B.s, ordinary, or what? A. A.B.s.

Q. How many watchmen do these boats carry? A. Three watchmen.

Q. What are their—what do their certificates call for? A. Certificate calls for A.B.

Q. How many deck watch do these boats carry? A. Three deck watch.

Q. Do you know how many, in your observation—do you know how many of these deck watch are A.B., and how

many are not A.B.? A. There is supposed to be three A.B. deck watches.

Q. When you say "supposed to be," you mean that is what you have observed as a general practice existing aboard these boats; is that right? A. Yes.

Q. Now, in 1944, you say that on the Widener there were only four A.B.s; is that right? A. That's right.

Q. The rest of them—what were the rest of the ratings? A. Ordinary seamen.

Q. Do you know whether or not they were acting A.B.s? A. They were acting A.B.s.

Mr. Rosenfeld: That is all.

Trial Examiner Leff: Mr. Hinslea, you may cross examine.

CROSS EXAMINATION.

Q. (By Mr. Hinslea): Tell me about your sailing experience—you are Mr. Babin? A. Yes; that's right.

Q. Tell me about your sailing experience from the time you started out, on the great lakes. A. On the great lakes, well, in 1930, I started on the Peter A. B. Widener, as a porter. I was on there for a full season. In 1931 I sailed on one of the Pittsburgh ships, for a period of three or four months. Now, I have been on quite a few of these here ships. I don't recall their names. Part of 19—

Q. Just on one ship in '31? A. Yes. Just one Pittsburgh ship. In 1932—

Q. Pardon me. As a porter? A. Yes; as a porter. Part of 1932 and 1933 I was porter and deckhand on three of the Hutch boats.

Q. That is the Pioneer Steamship Company? A. Hutchinson.

Q. It is Pioneer, or is it Buckeye? A. It is Hutchinson.

Q. They are just the managers. They have two companies, one is the Buckeye, and the other the Pioneer? A. It was the Pioneer. In 1935, I believe it was the Dinkey, I was porter and deckhand on her. In 19—

Q. For how long? A. In 1935 I was on for about two months.

Q. Had you gotten your A.B. certificate by that time? A. Oh, no; I didn't get my A.B. certificate until 1937. In—

1935 I also sailed as deckhand with the Pioneer. I don't remember the ship. In 1936 I sailed with the Pioneer.

Q. Do you remember how long? A. No; offhand I can't say.

Q. Well, it wasn't a whole season? A. No; it wasn't the whole season.

Q. Was it more than a month? A. Oh, yes. I usually —it was just two or three years there that I only put in about two or three months, during the whole season. The rest of the time I usually put in five or six months. I also sailed with the Inland Steel Company.

Q. What year was that? A. I think that went back to '34, or '33. I am not certain.

Q. You don't know how long you were on that boat? A. Pardon?

Q. You don't remember how long you were with the Inland Steel Company ships? A. No; I don't. In 1937 I was on the Queen City. That is the year I got my A.B. I was watching on the Queen City for—it was five or six weeks. I don't recall. I wasn't on there very long. 1938 and '39—

Q. Was that the only ship you were on in '37? A. Yes. '38 and '39, '40; '41 and '42, I was on the L. E. Block as an A. B. deck watch. In '43 I was on the Robert Fulton.

Q. Now, were you continuously on the L. E. Block those several years? A. Five straight years.

Q. Full seasons? A. Full seasons.

Q. Had she been unionized by that time when you first went on ship? A. No; she wasn't unionized the first time I boarded her.

Q. When did you join the National Maritime Union? A. 1941.

Q. You were on the Block then? A. I was on the L. E. Block then; yes, sir. Of course, in 1943 I was on the Fulton; and in 1944, part of '44, I was on the Widener.

Q. On the Fulton in '43. How long were you on her? A. The whole season.

Q. She is a Pittsburgh ship? A. Yes.

Q. Then the only sailing you did in '44 was on the Widener? A. The Widener, and one trip after that on the Interlake Steamship—for the Interlake Steamship on the Robert Hobson.

Q. One trip before April? A. No; I got off the Peter A. B. Widener on the 13th of June.

Q. Then you went on the Hobson? A. Not immediately. About 15 days later.

Q. What position did you hold on the L. E. Block? A. A. B. deck watch.

Q. How many times in all those years had you shipped as watchman? A. As watchman, just in 1937, and 19— and that one trip in 1944.

Q. Now, watchman pays more money than the deck watch; does it not? A. A few dollars more; yes.

Q. Did you have any preference as to why you wanted to be a deck watch rather than a watchman? A. Yes; I couldn't very well stand the outside lookout.

Q. Why? A. Well, I am not accustomed to cold weather.

Q. Well, a deck watch— A. It bothers me. I get a cold very easily.

Q. Well, as deck watch you had to work outside all the time; did you not? A. Well, that is true. But occasionally you can run inside and get warm, where you can't do that on lookout.

Q. When you are on lookout you can also get relief by the deck watch; can't you? A. If it is possible.

Q. As A.B. you were supposed to be qualified to stand a lookout; were you not? A. That's right.

Q. And you relieved the lookout from time to time? A. If the mate would let us do that; yes.

Q. Well, the mates don't keep a lookout on the forecastle deck for four hours at a stretch without relief; do they? A. Oh, they do. I have seen it happen.

Q. Wouldn't even let you go to the washroom? A. Well, providing the deck watch would go on relief. If the deck watch wasn't too busy.

Q. Well, I know, but have you ever seen an occasion where a mate refused to let a deck watch leave the forecastle, and go to the men's room? A. No; I can't say that.

Q. Now, with all your experience you had with your inability to stand the cold, why didn't you become a wheelsman? They work inside all the time. They never stand out in the cold. A. That is true; but the only time I ever went up to relieve the wheelsman—that was all. I

would rather be out on deck doing some work, and running around the deck than standing up in the pilot house for four hours.

Q. Notwithstanding your susceptibility to colds, and that you can't stand the cold weather? A. That's right.

Q. Now, you do have a preference for Pittsburgh Steamship boats; do you not? You like riding Pittsburgh boats; don't you? A. Well, I can't say I have a preference for them.

Q. Well, most of your life you have ridden on Pittsburgh boats; haven't you? A. Yes; that is true.

Q. Now, there wasn't any question about Captain Lehne and the officers of the Widener knowing you were an organizer on the ship; was there? A. They knew I was an organizer.

Q. And they knew you were an organizer from practically the first few days that you were aboard the ship; didn't they? A. Well, I couldn't say they knew that I was an organizer the first few days I was aboard the ship.

Q. When do you think it first came to the attention of any of the officers that you were an organizer, after you got on? A. About the second trip out to sea.

Q. When would that be? A. About the middle of April.

Trial Examiner Leff: Were you an organizer the preceding season? Were you on board a Pittsburgh vessel the preceding season?

The Witness: Yes; I was.

Trial Examiner Leff: Were you an organizer then?

The Witness: No; I was not an organizer.

Q. (By Mr. Hinslea): You commenced organizing these men as soon as you got aboard; did you, Mr. Babin, in March, when you were fitting out? A. Not immediately; no.

Q. How long was it after March 22nd that you began to organize the men? A. I'd say about our second trip out.

Q. That would be the—they started out early that year; did they not? A. Yes; we started out the day before Easter of that year.

Q. Well, isn't it a fact that you started out around the first of April, or a little before that year? A. Yes; it was about that.

Q. So that you started to organize these men around the first of April, or just a few days after that? A. It was two weeks after that.

Q. Well, you started out before the first of April. Would you say it was the 5th of April that you started to organize them? A. I can't say that.

Q. Well, let's put it this way— A. I can't say that, because we made two trips after the first—after we left Milwaukee.

Q. When did you leave Milwaukee? A. The day before Easter.

Q. You don't know what date that was? A. I believe it was around the 1st, 2nd or somewhere around there. I don't exactly know the date.

Q. Well, let's put it this way: You began to organize these men as soon as you got acquainted with them; isn't that a fact? A. That's right.

Q. And you kept on organizing them until the 13th of June; didn't you? A. That's right.

Q. And you got off the ship of your own accord; didn't you? A. Yes; I did.

Q. Now, when was the election on the Widener, with reference to whether or not the men wanted the NMU as a bargaining agent, or whether they didn't? A. Well, that I don't exactly know about the election day on the Widener. We held the election up in Duluth. It wasn't the 6th. It must have been a few days or so after that. I don't recall the exact date.

Q. Well, can you and I agree that the election on the whole fleet began on the 6th of June, and it ended about nine days later, for all the ships? A. I don't know if we can agree on that or not, because I am not certain just how long the election lasted.

Trial Examiner Leff: Will you permit me to interrupt you a moment. Is the election pertinent to the issues of this case? If it is I should like to have the details about it sometime during the hearing. Was it a Board ordered election?

Mr. Belkin: Yes; a Board ordered election, which was held, generally, I think, about the 6th of June.

Mr. Hinslea: It commenced on the 6th.

Mr. Belkin: Yes.

Mr. Hinslea: I think it commenced on the 6th, as the boats came into Duluth, and ended on about the 15th.

Mr. Belkin: It is pertinent, Mr. Leff, in this regard only: That the Union was campaigning, of course, to win the election. Of course, the Board has alleged that during its campaign it was intimidated.

I just bring this out to show that if we have the date of the election, I think that is all that is pertinent.

Trial Examiner Leff: I see. Well, I would like to know the results of the election, too.

Mr. Belkin: Well, the National Maritime Union lost.

Mr. Rosenfeld: The Regional number on the election was 8-R-1324.

Trial Examiner Leff: Well, I propose to take judicial notice of the formal proceedings in that representation case.

Q. (By Mr. Hinslea): Did you get off the ship—where did you quit the Widener? A. In Conneaut, Ohio.

Q. Had you and the unlicensed personnel on the Widener already voted before you quit? A. Yes.

Q. And it is a fact that you voted up at Duluth? A. Up in Duluth.

Q. Just before you quit? A. Yes, sir.

Q. In other words, you and the rest of the crew voted at Duluth, and then the vessel loaded ore, and came down to Conneaut, and you quit? A. That's right.

Q. And it takes about three days, does it not, to go from Duluth to Conneaut? A. Yes.

Q. So if my calculations are correct, you voted about the 10th of June? A. Well, it may have been—

Q. If you quit the 13th of June, you voted about the 10th? A. Well, it may have been about that.

Q. How many unlicensed men left this vessel with you at that time? A. There was three. Three; but I don't recall their names.

Q. Were they members of the Union? A. Two of them. Two of them were members of the Union, and one wasn't.

Q. Now, after you went to the Hobson, did you act as an organizer on her? A. No; I didn't.

Q. You did not do any organizing for the Union for the balance of that year? A. For the balance of the year?

Q. Yes. A. Yes; I organized up in Two Harbors.

Q. On ships? A. On ships.

Q. What watch were you on, Mr. Babin? A. I was on the 10 to 2 watch, second mate.

Q. The 2nd mate was in charge of that watch, and you don't know his name? A. I don't remember his name.

Q. You rode with him from the 22nd of March until the 13th of June and you can't remember your immediate superior's name? A. No.

Q. But you can remember the 1st Mate's name? A. Oh, yes; everybody remembers that.

Q. And you remember the Chief Engineer's name? A. That's right.

Q. Now, what was the first conversation you and the Captain had up in his room? A. That is when the Captain said that he understood I was an organizer.

Q. What else did he say? A. I told him I was. That is when he said, "The Company doesn't want any Union men aboard the ship."

Q. Did he indicate he had any authority to say that? A. Did he indicate that he had any authority to say that?

Q. Yes. Or was that just his opinion? A. Well, I don't know. I wouldn't say it was his opinion, the way he put it to me.

Q. He never found any complaint with your work; did he? A. No; he didn't.

Q. In all of the conversations that you have testified to the only thing he said to you is that the Company didn't want any Union men aboard the boat, that had anything to do with the Union?

Mr. Belkin: Objection. I don't believe Mr. Hinslea is quoting the witness properly.

Mr. Hinslea: I am not quoting him. I am asking him the question.

Trial Examiner Leff: He is not quoting. He is cross examining the witness. Objection overruled.

The Witness: Would you mind repeating that.

(Last question read by reporter.)

Mr. Hinslea: Strike that out. I will rephrase the question.

Q. (By Mr. Hinslea): As I understand it, the first time the Captain talked to you, he told you that he under-

stood you were an organizer, and you said you were; is that a fact? A. That's right.

Q. And then he said the Company didn't want any Union men aboard his boat; is that right? A. That's right.

Q. And the rest of the conversation had to do with: "You were bothering the men at work"; and you denied it, isn't that right? A. I denied that part; yes.

Q. And then the other conversation you had two weeks later, in that conversation he merely said to you that you were still interfering with the men at their work; didn't he? A. Yes; but he also said that I couldn't force the men into joining the Union.

Q. Did he say that two weeks later, or did he say that five or six days after that? I have notes of three conversations with him. Now, which conversation did he say that you couldn't force the men into the Union? A. He stated that in the very first meeting we had.

Q. I see. Well, that is a fact, isn't it, that you can't force anybody into a Union? A. We don't force anybody into—

Q. No. I say, that is a fact; isn't it? Isn't that a fact? A. It is not our practice—

Q. No. No. I am not asking—isn't that a fact that you or anyone else can't force a man into a Union? A. That's right.

Q. Sure. So the Captain wasn't misstating that; was he? A. No; he wasn't.

Q. Now, you can only hope to get men into the Union because of your salesmanship ability; isn't that right? A. That's right.

Q. Now, the last conversation that you had with him, how do you remember so well that it was on Lake Superior going to Two Harbors? A. Well, we were at anchor inside of White Fish.

Q. Well, is it unusual for a ship to anchor in White Fish in the fog? A. No. That is why I remember it was on Lake Superior going up.

Q. Was it en route, or while anchored? A. En route.

Q. You had lifted anchor, and—you had hoisted anchor, and you were on your way? A. Yes; we were on our way.

Q. Where were you? A. Outside of White Fish Point.

Q. How far? A. How far out, about a couple of miles.

Q. Do you remember when it was? What month it was, and what day it was; what time of day it was? A. Well, it was in the morning when I came on watch.

Q. Right after 10 o'clock? A. Right after 10:15.

Q. Then again the only complaint he had was that you were interfering with the men, with their work; is that right? A. No; he told me not to talk Union to them.

Q. You testified on direct examination that the third time you talked to him the Captain called you up and said you were interfering with the men working, and you denied it. Now, do you want to change that testimony? A. No; that is true right there.

Q. What I said is true? A. Yes; what you said is true.

Q. And didn't he also say to see if you couldn't get the men to do their work, as a deck watch? A. Yes.

Q. And you said you would? A. I said they were doing their work.

Q. To your satisfaction? A. To my satisfaction, and everybody else's satisfaction.

Q. Well, how do you know that it was to everybody else's satisfaction? The Captain, apparently, wasn't satisfied when he asked you to see if these men wouldn't do their work better. A. Well, the mate had it in for me, and every time I came on watch the mate thought I was doing nothing but laying around.

Q. I am talking about the Captain. The Captain must have been dissatisfied with the work of the men; was he not? A. Well, he got that from the 1st Mate.

Mr. Hinslea: I move that answer be stricken as not responsive to the question.

Mr. Belkin: I object to that.

Trial Examiner Leff: I don't think your question is proper to begin with. It is really hypothetical in nature.

Mr. Hinslea: It probably speaks for itself. If the Captain complained about the others work, he was dissatisfied.

Trial Examiner Leff: I agree with you. The inference can be drawn from the other testimony of the witness. I do not think we need the witness' conclusion on that. It would be more of a guess than anything else.

Q. (By Mr. Hinslea): Now, the first mate, the first incident you had with him was when you were putting on the anchor claws; is that right? A. That's right.

Q. Do you know any other name for the anchor claws? Is that the proper sailing expression? A. Well, the claws; yes.

Q. That is the only thing— A. Yes; put the claws on the anchor.

Q. That is the only thing you know about it? A. Yes.

Q. And you are an A.B.? A. That's right.

Q. Was that the first time you ever put the devil claws on the Widener— A. No; that was not the first time.

Q. I said, on the Widener? A. That happened to be the first time; yes.

Q. When was that? A. That was when we were going up on Lake Superior.

Q. Did the mate know you were an organizer at that time? A. If he did he didn't say anything to me about it.

Q. Now, the next incident you had with the 1st Mate had to do with handling tarpaulin? A. That's right.

Q. Where was that? A. Where?

Q. Yes. A. That was out on deck.

Q. I know tarpaulins are on deck. But where was the ship? A. The ship?

Q. Down-bound, or where was it? A. It was down-bound.

Q. When was it? A. Right after we left Two Harbors. I don't know the exact—

Q. I mean what month, and what date. Did you answer my question? A. No; I didn't. It was in the month of April.

Q. Do you know when? A. No; I don't know the exact date.

Q. What time of day was it? A. It was during the day, after I came on watch. After 10:15 in the morning.

Q. Now, what watch does the mate stand? A. Two to six.

Q. So it is your testimony that the mate, having stood his watch from two o'clock in the morning until six, he said—he either stayed up, or got up after you got on watch, and then came out and took the tarpaulin away?

Mr. Belkin: Objection.

Q. (By Mr. Hinslea): Well, isn't that a fact?

Trial Examiner Leff: The objection will be overruled. I think the witness understands the question.

The Witness: I understand.

A. Well, I don't know what the mate was doing, or where he was at, but when I came out there he came out right after I came on watch.

Q. The mate always stayed up on your watch from 10 to 2? A. No; he didn't always stay up.

Q. Where was the ship at that time? What lake was she on? A. Lake Superior.

Q. Where had you loaded? A. I believe we loaded in Two Harbors.

Q. Now, these deckhands that you had with you working on the tarps, were they experienced men? A. No; they weren't.

Q. The tarp spreads out? A. It does.

Q. Were you doing it all alone? A. No; I wasn't doing it all alone.

Q. I thought you said these deckhands were standing off to one side? A. Two deckhands were on one side of the tarp, and another was at the other end of the tarp.

Q. And you were supervising the work? A. Yes.

Q. Now, did the mate and the Chief Engineer use the same kind of profanity that you have testified to here today? A. They did. They used—they both used one particular word there.

Q. Well, why be bashful about it? You already said it three times. What word did they use? A. Well, they both told me to get my ass out.

Q. They both used—did the rest of the officers use the same language to you? A. No; none of the other officers used that language to me.

Q. Well, it is unusual for sailors or officers to use profanity; is it? A. Is it unusual?

Q. Yes. A. When they are—it is not unusual; no.

Q. Now, coming to the Chief Engineer, where is the board that you mark up the sounding from the ballast? A. Down in the engine room.

Q. Isn't it located in the fantail just outside the engine room? A. No; this one was right in the engine room.

Q. Where in the engine room? A. The inside of the engine room door; that is, it was in the door as you step into the engine room.

Q. That is what I am getting at. It was at the after end of the engine room, just inside the door leading off the fantail; isn't that right? A. It was inside the engine room.

Q. It was inside of one of the doors of the engine room or leading from the fantail to the engine room? A. That's right.

Q. On to a platform, and then there were steps going down to the working platform of the engine? A. Yes.

Q. So all you had to do was put one foot in the door, and one foot out on the fantail, and you could mark that board; couldn't you? A. No.

Q. You couldn't? A. It was too far over for me to do that. I had to step inside.

Q. And take a couple of steps over the platform? A. Yes; and mark it up.

Q. Now, the engineers when they are operating their engine, they are at least eight or ten steps down below this platform and this door leading to the fantail; are they not? A. Yes.

Q. And it is your testimony that the Chief wouldn't even allow you inside that door to mark the board? A. That's right.

Q. Is it your testimony that he told you to telephone from the pilot house, not only the soundings, but also when to turn the water on or off? A. He told me to telephone from the pilot house if they wanted the water shut off. They should call him from up above.

Q. Now, isn't that a usual practice on a steamboat, when you want the ballast tank started to be filled, while you are unloading, that you go up in the pilot house and telephone back to the Engineer, and say, "Start watering No. 1," or "Start watering No. 3"; isn't that right? A. We weren't unloading.

Q. Well, you put water in the ballast tanks when you are unloading? A. Yes; but this was on the run.

Q. Just analyze this thing. When you are unloading, and as the ship comes up in the air, you run water in the ballast tanks; so that you put her down, so as to facilitate the unloading with the rigs; isn't that right? A. Yes.

Q. You go up in the pilot house and call the engineer on watch, and say, "Turn the water on No. 1." A. No; you can't do that.

Q. You have to do that? A. Go down below and tell the ship's—

Q. You had to go up and use the telephone, and call— A. No; you have to go down in the engine room and tell the engineer.

Q. I see. He told you, however, to go in the pilot house when you wanted the water turned on, and telephone down to the engineer; isn't that right? A. He told me to tell the Mate; yes.

Q. Now, when you come to—when you are loaded, of course, you have no water in the water ballast, in your side tanks? A. That's right.

Q. And you do sound the ship every watch to see if she is making any water? A. That's right.

Q. And that is the purpose of putting the sounding on the board so the engineers can see that? A. Yes.

Q. And if you get five or six inches in one of the tanks, the engineers will automatically put on the ballast pumps; isn't that right? A. Yes.

Q. Did the engineer tell you that you would also have to telephone these soundings that you made to the engineer, and have him put that on the blackboard? A. The engineer said that I should tell the Mate to tell him—to call up and tell him when to shut the water off, and when to turn it on.

Q. I am not talking about shutting the water off—you have two jobs. Your one job is to tell the engineer to turn the water on or off when you are filling ballast tanks. Now, you say the engineer told you to tell the Mate to telephone back. Now, there is another job when you unload ore, leaving Two Harbors, and come down the lake, there is no water in your ballast tanks, or there is not supposed to be? A. That's right.

Q. You use the deck watch sounder just before you go off watch? A. That's right.

Q. You might find no water in No. 1; two inches in No. 2; and three inches in No. 3? A. That's right.

Q. That is what you put on the board that you described; isn't that right? Just inside the door of the engine room? A. Any time there is water in the tanks I mark it up on the board, regardless.

Q. You never put soundings on the blackboard when the tanks are full? A. Oh, yes; you do.

Q. You do? A. Why, certainly.

Q. Now, did the Chief tell you in addition to calling him up on the telephone on filling the tanks or shutting the water off, did he also say that you should telephone back any soundings to be put on the blackboard? A. No; he said nothing about the sounding being put on the blackboard.

Q. He didn't forbid you from stepping in the door and marking the soundings on the blackboard? A. That is going into the engine room.

Q. I say, did he forbid you from putting the marks on the blackboard? A. If he forbid me to go to the engine room, he, evidently, forbid me from marking up the soundings.

Q. That was your interpretation? A. Yes.

Q. Did you continue to put the soundings on after he told you to get your ass out of the engine room? A. No.

Q. You never put them on again? A. No; I told the watchman to do it. I told the Captain, and the Captain said, "I will have the watchman get it."

Q. Did the watchman sound her after that? A. No; I would sound her.

Q. And then you gave the board to the watchman? A. If he was on deck.

Q. If he wasn't on deck who did you give it to? A. To one of the deckhands.

Q. If the deckhands were not on deck? A. I'd tell the Mate about it.

Q. Then what would he do? He would go back himself? A. No; he would call up and tell them what to put on the board.

Q. Now, you are positive of that? A. Absolutely.

Q. The Mate on your watch? A. The Mate on my watch.

Q. Now, you stood the 10 to 2 at night; is that right? A. Yes.

Q. The deckhands don't work at night; do they? A. Only when necessary.

Q. Now, coming down the lake, the only men on deck would be you and the watchman; is that right; on the 10 to 2 watch at night? A. Yes.

Q. And you made the soundings about a quarter to two before you went off watch? A. Yes.

Q. And if the watchman was on the forecastle in the fog, or in the rivers, would you give him the board and have him go back, and you take his place as a lookout? A. Yes; for a while I did that.

Q. How long? A. Oh, it was about two weeks, or so, before the Captain said I was allowed to go back in the engine room and mark the soundings up.

Q. Oh, the Captain finally told you you would be allowed to go back and mark the markings? A. Yes.

Q. And you did it after that? A. Yes.

Q. Now, you testified that the Widener, while she was required to carry A.B.s only had four A.B.s. Was that the entire time you were on the Widener? A. No; not the entire time.

Q. When did she carry four and when did she carry eight? A. We never had more than five A.B.s while I was on her.

Q. All the time you were on her? A. All the time I was on her.

Q. Now, do you know all the Government regulations during this wartime period on carrying A.B.s? A. Well, I can't say that I know.

Q. Now, the carrying of A.B.s on a ship is strictly under the supervision of the United States Coast Guard; is it not? Do you know? A. Under the supervision of the United States Coast Guard, I believe it is.

Q. Did you think that the vessel was unseaworthy because she only had four or five A.B.s? A. Well, I thought so.

Q. Why didn't you report it to the United States Coast Guards? A. Why, I have nothing to do with that.

Q. Well, did you think you were risking your life because you carried four or five A.B.s instead of eight? A. Certainly I thought so.

Q. Why didn't you report it to the Coast Guard if you were risking your life? A. Well, I didn't.

Q. Why didn't you? A. I just don't know why.

Q. Did you report it to the Captain? A. The Captain knew it.

Q. I am not asking that. Did you report it to the Captain? A. No.

Q. Now, the first trip leaving Milwaukee, the day before Easter, how many A.B.s did she have that trip? A. Four.

Q. The second trip, how many A.B.s did she have? A. Four.

Q. The third trip, how many did she have? A. I don't know, because we had four A.B.s for quite a while.

Q. How many did you have the fifth trip? A. Then we got an extra A.B.

Q. You had five. How many did you have the next trip? A. All we had was five. That was the most A.B.s we ever had.

Q. From March 22nd to June 13th the most you ever had was five? A. That's right.

Q. Did you check these men and look at their books to see whether they were A.B.s or ordinary seamen? A. I saw their books.

Q. Why would you see their books? A. They showed it to me.

Q. Did you ask them? A. No.

Q. Well, you mean they all came up as they got aboard the boat and voluntarily showed you their books? A. No; they didn't. We were looking over—

Mr. Belkin: I think that it is about time for me to make an objection to this entire line of questioning. I don't see its relevancy at all.

Trial Examiner Leff: I don't either. The Board raised it, and since the issues of the case aren't as yet clearly defined to me, I didn't want to put an end to it. But unless somebody will point out that it has something to do with the issues of this case; that whether there were four or five or eight A.B.s, I am going to exclude all the testimony.

Mr. Hinslea: I say to you, Mr. Examiner, I didn't know the relevancy at the time whether there were four or eight A.B.s. The Board went into it very thoroughly, and I did it on cross examination. I don't see the relevancy.

Trial Examiner Leff: Do you—

Mr. Belkin: I contend, Mr. Examiner, that the number of A.B.s aboard a ship, as a regular practice, is relevant.

Trial Examiner Leff: In what way? Now, confine yourself to the complaint in this case.

Mr. Belkin: Well, definitely, I don't know whether—since you asked, I shall tell you at this time. I think it is going to come out very shortly. The Board alleges that the Company discriminatorily discharged one, Howard Sharp, an A.B. We will show, if the Examiner please, that when they discharged this A.B. they left that particular ship upon which he worked very shorthanded; and that in his place they put one who did not have the same qualifications. That is why the normal practice as to the complement of A.B.s carried aboard the Pittsburgh Steamship Line and other lines is relevant.

Trial Examiner Leff: Under the circumstances it may be relevant to your allegations. Since it is relevant, I think counsel for the Respondent should be permitted to continue.

Mr. Belkin: Well, for the life of me, I can't see why, after we have found out the number of A.B.s aboard this particular ship, why we need to continue our examination of that. But, of course, that is entirely up to Mr. Hinslea.

Trial Examiner Leff: On cross examination I generally allow some latitude. If I think he exceeds the proper bounds I will put a stop to it.

Please proceed.

Mr. Hinslea: I don't see how the steamer Widener having four has anything to do with another ship in the line. It isn't a matter of practice. It is a matter of regulation. When the time comes, Mr. Examiner, we will show that there have been, in this war period, by the Coast Guard on A.B.s. It is necessary.

Trial Examiner Leff: It will probably be very pertinent.

Mr. Hinslea: I expect to show that when the time comes.

Trial Examiner Leff: All right. Please proceed.

Q. (By Mr. Hinslea): All the time you were on the ship, Mr. Babin, you conducted Union activities; did you not? A. I did.

Q. And you passed out literature, you testified? A. That's right.

Q. And you had men sign up for the Union? A. That's right.

Q. You discussed with them the advantages in voting for the Union at the coming election? A. I did.

Q. Now, isn't it a fact you went aboard that boat for the sole purpose of being an organizer, and helping them out in the conduction of the election? Isn't that a fact? A. No.

Q. It isn't? A. No.

Q. You were an organizer when you went aboard the boat; were you not? A. After I got on the ship they asked me.

Q. Who asked you? A. The Union.

Q. Well, that doesn't mean anything. There are 90,000 men in the Union, they say. Who asked you? A. An organizer who was on the ship at the time.

Q. Did he get off? A. In May; he did.

Q. Well, then, there were two organizers on the ship? A. Two organizers; yes.

Q. All that they ever told you to do was to, not interfere with the men who were working, in organizing; that's right, isn't it? A. That's right.

Q. And the engineer said you were causing his men to lose sleep by waking them up talking Union? A. That is what the engineer said.

Q. Who was the other organizer? A. Victor Teach.

Q. And he got off in May? A. He got off in May.

Q. Now, this Victor Teach, was he in the forward or after end? A. He was in the aft end.

Q. He was under the supervision of the Chief Engineer? A. Right.

Q. Now, is it your testimony that at no time from the 22nd of May to the 13th of June you never talked Union, or Union activities, or anything about the Unions when you were on watch? A. No; I didn't.

Q. Never? A. No; because that was—

Q. Or did you ever talk to anybody else while they were on watch about the Union? A. I didn't bother anybody when they were on watch.

Q. When you were scrubbing cabins with the deckhands you never mentioned the Union? A. No.

Mr. Hinslea: That is all.

Mr. Belkin: If the Examiner please, I have one or two questions.

Trial Examiner Leff: Please proceed.

RE-DIRECT EXAMINATION.

Q. (By Mr. Belkin): Mr. Babin, did you ever wake up anyone in the Engineer's crew to discuss the Union with them? A. I never went in any room where men were sleeping.

Q. Were you criticised for your work on board any of the ships in which you served prior to 1944? A. No; this was the first time anybody ever criticised my work.

Q. You worked on another ship in 1944; did you not? A. Yes; I did.

Q. Were you criticised for your work aboard that ship? A. No.

Mr. Belkin: That is all.

RE-CROSS EXAMINATION.

Q. (By Mr. Hinslea): Why did you get off this ship? A. Ulcers.

Q. This ship that you had made one trip on? A. Ulcers.

Q. Now, isn't it a fact that if you go in an oiler's room, or fireman's room, some men are sleeping, and some men are still awake; they don't all sleep at the same time? A. No; that is not true.

Q. They are on different watches? A. They are on different watches.

Q. You never would go in the fireman's or deckhand's or oiler's room where one man was sleeping, and the other man had just come off watch and was awake? A. No.

Q. You never had that experience? A. Any time a man is sleeping I don't enter his room.

Q. Did you always put your head in and see if the man was sleeping? A. No.

Q. Where did you do your talking? A. On deck.

Q. The Union aetivity talking? A. On deck.

Q. It is pretty cold on the lakes in September; is it not? A. Yes; it is.

Q. Did you stand out, with your weakness for exposure to the cold, on the first day of April, and talk Union activities, instead of going in the room? A. Not very long.

Q. But you did stand out in the cold weather of Lake Superior and talk Union activities with only the men who were off watch? A. That's right.

Q. And they sit out there with you? A. That's right. For a short time; yes.

Trial Examiner Leff: Any further questions?

Mr. Belkin: That is all.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: We will have a five-minute recess.

Mr. Belkin: It is a quarter to 12. Do you want to adjourn for an earlier lunch, and we can go right on?

Trial Examiner Leff: We will adjourn now until 1:15.

(Thereupon, a recess was taken until 1:15 o'clock, P.M.)

After Recess.

(Whereupon, the hearing was resumed, pursuant to the recess, at 1:15 o'clock, p.m.)

Trial Examiner Leff: The hearing is in order. Call your next witness, please.

RALPH ANDERSON ZMRAZEK, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: Give your full name and address to the Reporter.

The Witness: Ralph Anderson Zmrazek, 6122—

Mr. Belkin: You better spell your name.

The Witness: Z-m-r-a-z-e-k. 6122 Stearns Road, North Olmsted, Ohio.

DIRECT EXAMINATION.

Q. (By Mr. Belkin): Now, Ralph, directing your attention to the year 1944, did you work for the Pittsburgh Steamship Company during that year? A. Yes, sir.

Q. Will you tell us what the term of your employment was? A. Well, I was an ordinary—I mean a deckhand, and a deckwatch, and a watchman, and a wheelsman.

Q. When did you start? A. I fitted out the ship in Fairport about March 27, 28. Someplace around there.

Q. When did you leave the ship? A. Oh, around Thanksgiving.

Q. What was the name of the ship? A. Samuel F. B. Morse.

Q. Now, Ralph, can you tell us who the officers aboard that ship were? A. Captain Gerlach of Sandusky, C. E. Gerlach, and Herbert Todd.

Q. What was he, the 1st Mate? A. He was the 1st Mate; and Cornelius Zyp was the 2nd, and Wandelts was the third man.

Q. Who was the Chief Engineer? A. Haller from Lakewood.

Q. Will you spell that for us, please. A. H-a-l-l-e-r. Something like that.

Trial Examiner Leff: In the course of the hearing, at some appropriate stage, will you introduce some evidence showing just how many ships there are in the fleet of the Pittsburgh Steamship Company?

Mr. Belkin: With the help of Mr. Hinslea, I will make an effort to do so. I believe the number of ships have changed. Last year they had some 70, but Mr. Hinslea told me before the hearing they had reduced it. How many they have now I don't know. Mr. Hinslea tells me that in 1944 there were 67 ships.

Trial Examiner Leff: One other question. Did this election cover unlicensed personnel on all ships in the fleet?

Mr. Belkin: I believe it did.

Trial Examiner Leff: Will you proceed, please.

Q. (By Mr. Belkin): Now, Ralph, in the course of your shipping or voyaging aboard the Morse, did you at any time have any conversation with the Captain, or any other officers on matters involving the Union? A. Well, I had a conversation with the Captain a couple of times about the Union. We talked about it. He tried to talk me—not to join the Union.

Q. Tell us just what he said to you? A. Well, I don't know every word, word for word. But I know a little bit. He said that I shouldn't join the Union. It is no good. If the Union gets in—"If the Union gets in, it will take maybe three or four years before they finally sign the contract with the Company." He said, "The Union is just a bunch of no good drunks, Communists," and all that. The organizers, and all that.

Q. Where did those conversations take place? A. In his quarters, the Master's quarters.

Q. What were you doing in his quarters? A. Shampooing—

Q. What? A. Shampooing his hair.

Q. When did this conversation take place? A. Well, about—oh, about two or three weeks out. Sometime in April, the middle of April.

Q. How often did you go in the Captain's cabin to take care of his hair? A. About once a week.

Q. Did you ever converse with the Captain concerning these matters at any other time? A. When I used to come up to his room, he would always bring up to you every time—he would bring it up. If he didn't say it one time. he would bring it up the next time I would see him, see.

Q. What would he say to you on these occasions, to the best of your recollection? A. All the time I went up there it just was the one thing: That I shouldn't join the Union. That is all. I shouldn't vote for it. He told me I shouldn't vote for it.

Q. Did he explain his position to you, or did he give you any reasons for his statements? A. Yes. He says—he says, "If you join the Union, you couldn't sail with me next season." The following season, see, if I would like to go with a certain Captain, I couldn't go with him. I would lose my seniority, and—well, I would lose my seniority, and I couldn't sail with the Captain for the next year, see? If I wanted to ship next year I couldn't sail with him, if the Union was in.

Q. Did he explain why that would be so? A. Because the Union had a certain way of shipping out men through the hall.

Q. You mean the rotary shipping list? A. Yes; something like that.

Trial Examiner Leff: What list?

Mr. Belkin: The rotary shipping list. There will be an explanation of that policy of the Union later.

Q. (By Mr. Belkin): Did you at any time in your conversations with the Captain discuss Arno Weissflog? A. Yes. He said I should keep away from him, and I shouldn't listen to what he was talking about, because he was a little cuckoo, he said.

Trial Examiner Leff: How do you spell that name?

The Witness: I don't know.

Mr. Belkin: A-r-n-o W-e-i-s-s-f-l-o-g.

Q. (By Mr. Belkin): I think we were interrupted, Ralph. A. (Continuing): He said I should keep away from him, and not listen to what he was trying to tell the other fellows on the ship.

Q. Did the Captain ever tell you whether you knew —ask you whether you knew the Union affiliations or members of the crew? A. Sir?

Q. I will reframe that. Did the Captain ever ask you whether you knew if the men aboard the ship were members of the Union or not? A. Yes; he asked me, but I told him, "No."

Q. Just what did he say to you? A. Well, he asked me if—do I know the Union organizers on there. I said, "No."

Trial Examiner Leff: When and where was that conversation?

The Witness: That was out to sea, say, about the middle part of May. Someplace around there.

Q. (By Mr. Belkin): Was anyone else present at that time? A. No, sir.

Q. Where did this conversation take place? A. In his quarters.

Q. I want to direct your attention to the time your ship docked at Conneaut and some of the men didn't board the ship while it was first docked, but boarded it later. Do you recall that incident? A. Well, we was in Conneaut. I think the Mate said that we were going to be there for quite a while. I remember him saying that. He said, "You will probably hear the whistle blow." So we went into the dock, and we unloaded in a short time, see. Then we went over to the fuel dock to fill up our coal bins. Then about 10 fellows came aboard. The Captain—I mean the Mate, he jumped on—

Q. Which Mate was this? A. The 1st Mate.

Q. What was his first name? A. Todd. He jumped on Weissflog. He was about the third man coming up the ladder. He picked on him. All the other 8 or 9 fellows with him, he didn't say nothing to them.

Q. What, if anything, did he say to Weissflog? A. I didn't hear. I was doing my work up there. I didn't pay attention to it.

Q. Did you see these men coming aboard the ship? A. Yes, sir.

Q. Did you see the Mate speak to Weissflog? A. Yes. He pulled him on the side and told him—I walked past. I couldn't hear what he said.

Q. Did the 1st Mate speak to any of the other men that came aboard with Weissflog? A. No; he didn't say nothing to them.

Q. Did you ever have any conversation with the Chief Engineer on matters involving the Union, Ralph? A. No; I never talked to him about the Union.

Q. Did you ever see, or were you ever present when the Chief Engineer discussed matters with someone else? A. Well, he was talking—I remember I was in the lunchroom—I mean the mess room, sipping on a bowl of soup up there when he was talking to somebody about the Union.

Q. With whom was he talking? A. I think he was talking to Arnie, over there (indicating).

Q. You mean Arno Weissflog? A. Yes; Arno Weissflog.

Q. When did this conversation take place? A. Well, sometime in May. The latter part of May.

Q. What if anything did the Chief Engineer say to Arno Weissflog; and what if anything did Arno say to the Chief Engineer? A. Well, they were talking about this —the wage cut. He was talking about, "How can the Union give them overtime—give overtime to the oilers for turning on some kind of valves in the engine room." Something like that it was. That is what they were talking about. I left after I heard that.

(Thereupon a document was marked for identification Board's Exhibit No. 2.)

Q. (By Mr. Belkin): I will now hand you what has been marked for identification as Board's Exhibit 2, and I will ask you if you have ever seen that before? A. This, up here, (indicating) was printed—they slapped it up in the mess hall up there.

Q. On board your ship? A. Yes, sir.

Q. Will you tell us what it is? A. Well, I read it a couple of times up there.

Trial Examiner Leff: Won't that speak for itself?

Mr. Belkin: Yes; it will. I will withdraw that question.

Trial Examiner Leff: Where did you say that was?

The Witness: That was on a bulletin board in the mess room.

Trial Examiner Leff: When did you first see it there?

The Witness: Some time in May. The latter part of April.

Mr. Hinslea: What is it? Have you introduced it yet?

Mr. Belkin: No; I haven't introduced it yet.

(Thereupon, a document was marked for identification Board's Exhibit No. 3.)

Q. (By Mr. Belkin): I will hand you what has been marked for identification as Board's Exhibit 3. Did you ever see that before? A. That was up there, too.

Q. Where? A. In the mess hall.

Q. And when did you see it? A. Well, oh, just a couple of days before the election.

Q. When was the election held; do you remember? A. The 6th. The 6th of June.

Mr. Belkin: You may cross examine.

Mr. Hinslea: Have you introduced those?

Mr. Belkin: Not yet. Do you want to see them?

Mr. Hinslea: I saw the Examiner making notes on them.

Trial Examiner Leff: I am not making notes on the Exhibit. I haven't looked at them yet.

Mr. Hinslea: I thought you were making notes as to when he saw it.

Trial Examiner Leff: Oh, yes; I am making notes on the testimony, but not on the Exhibit that hasn't been introduced.

Mr. Hinslea: Of course, this underscoring—I have no objection—

Trial Examiner Leff: Why don't you reserve your objection until he offers it?

Is there any particular reason why they should not be offered at this time?

Mr. Belkin: Yes, Mr. Leff, I can better identify them later. I can make a more complete identification.

Trial Examiner Leff: All right.

CROSS EXAMINATION.

Q. (By Mr. Ray): How old are you, Ralph? A. 18.

Q. How long have you been sailing? A. Since March 27, last year.

Q. March 27 of last year. So that this season that you have been describing in your direct testimony was your first season? A. That's right.

Q. And you were 17 at that time? A. 16.

Q. 16 at that time. Now, how did you happen to become chief shampooer for the Captain? A. He just asked me to come up one day. That is all.

Q. Do you have any special ability along that line? A. No.

Q. Does anybody else share those duties with you? A. No. He just asked me if I would do him a favor and come up to his room.

Q. How long a time would you spend in the Captain's quarters? A. From about after supper time—from about 6:30 to 7:30. About an hour and a half, or something like that.

Q. Now, how do you fix these conversations as being in May, Ralph? A. Well, this drive was going on.

Q. What drive? A. To try to get everybody—to get the ship unionized up there.

Q. When did that drive start? A. Oh, I don't know. Sometime in April or May. Some place around there. The latter part of April, or the first part of May it started.

Q. Was that how you fix your conversations with the Captain as being in May, because in your direct examination you— A. Well, he brought me up first. He knew, himself, that they were—that the men were trying to get us, you know.

Q. He brought you up first. You had come up to shampoo his hair? A. That's right. Then he brought it up, the Union.

Q. He didn't call you in the cabin at any time. You came up to perform this shampooing work. That is a fact; isn't it? A. Yes; he called me up. And then one time he

brought me up. I came up there—I was the second guy up there. He brought everybody up—let's see. The watchman was up there first. He told him not to vote for the Union. I was second, and then he brought somebody from back aft.

Q. Well, wait a minute. You weren't there when that conversation took place with the watchman; were you? A. Sir?

Q. You weren't there when the conversation took place with the watchman; were you? A. No; but I asked—

Q. Wait a minute.

Mr. Ray: I ask that the answer be stricken.

Mr. Rosenfeld: I think the witness should be permitted to finish his answer before any objections are made to it.

Trial Examiner Leff: Yes. Please finish your answer.

A. (Continuing): We asked the guy what the Captain was asking about. He told me about the Union.

Mr. Ray: I move that the answer be stricken as hearsay.

Trial Examiner Leff: You asked for it, Mr. Ray. I will let it stand.

Mr. Ray: If the Examiner please, I asked him if he was there. He said he wasn't. Then I moved to strike his answer on the ground—

Trial Examiner Leff: Didn't you ask him how he knew?

Mr. Ray: To find out whether it was hearsay or not. It proved to be hearsay, and then I moved it be stricken.

Trial Examiner Leff: How can we strike it until we know whether it is hearsay or not. Let it stand.

Mr. Ray: The fact that he had the conversation with the watchman, of course, is not hearsay. But the conversation between the watchman and captain is obviously hearsay.

Mr. Belkin: If the Examiner please, even if it were hearsay, it being the result of counsel's questioning, I think it is properly in the record.

Trial Examiner Leff: I have ruled on the motion to strike. Please proceed.

Q. (By Mr. Ray): Ralph, at that time in Conneaut where those men came aboard, 9 men, you say, including

Weissflog, where were you on the vessel? A. I was back aft at the stern putting the ladder down. I put the ladder down and secured it. Then I went back aft, and I heard him giving him heck.

Q. What did he say? A. Well, he jumped on him. That he should be up here an hour before sailing time. Then I walked away. That is all I heard of the conversation.

Q. How did you know it was directed to Weissflog? A. Because he was the only guy that was around there.

Q. You don't know whether he talked to the other men at any other time? A. No; I didn't see them. All the other fellows went right to their forecastle.

Q. You don't know whether he talked to the other men on any other occasion about coming back late? A. No; he didn't say nothing to them.

Q. I say, do you know whether he did or not? A. I didn't hear him.

Q. On any other occasion? A. No.

Q. Now, give us the substance of that conversation, Ralph. A. What conversation?

Q. With Weissflog and the Mate. A. With the Mate, you mean?

Q. That's right. A. Well, I just told you before. I put down the ladder, and secured it. I walked back aft. I walked—just before the aft cabins there was the Mate with Weissflog. The Mate jumped on him, and he says—he said, "You should be here an hour and a half before sailing time." That is all I heard. I walked forward.

Q. What did Weissflog say? A. I didn't hear.

Q. You didn't hear what he said? A. No.

Q. And yet you were—how far away from the two men were you? A. I heard a little bit about it.

Q. You heard what? A. I think I heard a little bit. Wait a second. Weissflog told the Mate—he asked the Mate, I think—he said—why don't he jump on the other fellows? Why did he jump on him alone.

Q. What else did he say? A. That is all I heard.

Q. Now, how far away from these men were you at the time of this alleged conversation? A. Well, I was about—oh, say, about 10, 20 feet away. I was walking forward to get my heaving lines, and towing the gear away.

Q. Were you particularly interested in what was going on between those two men? A. No. It was none of my business, so I didn't pay any attention to it.

Q. Yet you can remember, and recite it almost word for word now? A. No; that ain't word for word.

Q. Where did the other men go that came up back of Weissflog? A. They went right into their forecastle.

Q. Now, with whom have you talked before testifying in this case?

Mr. Belkin: Oh, Mr. Leff, that is entirely objectionable. Not that I care about the answer. But it certainly is not material to this testimony.

Trial Examiner Leff: I think it is proper on cross examination.

Mr. Belkin: I will withdraw the objection.

A. What was the question again?

Q. (By Mr. Ray): Who did you talk to before testifying today? A. Today, you mean? I didn't talk to nobody.

Q. Haven't you talked to anybody prior to coming on the stand at any time about your testimony in this case? A. Well, they—nobody asked me. I was here, and I went over to the Union Hall. They just asked me if I wanted to testify against any of those working agreements that they have on the Lakes.

Q. Who asked you that? A. The Union organizer—I mean the agent here.

Q. Did counsel talk to you? A. No.

Q. Didn't the Union's counsel talk to you? A. Yes.

Q. Did you tell them the same story you are telling now? A. That's right.

Q. What have you been doing since you left the Morse? A. I sailed salt water.

Q. On what boat? A. Matthew J. O'Brien and Edward L. Grant.

Q. Who owns those vessels? A. The Lick Brothers own the O'Brien, and Barber Steamship owns the Grant.

Q. What are you doing now? A. Helping my father on the farm.

Q. On the farm? A. Yes; painting a house, while I was home.

Q. Now, the only conversations on that vessel that had anything to do with, or that were involved in any way with

the Union was between you and the Captain; is that right? A. That's right.

Q. Now, when you laid the vessel up, did you apply to the Captain to come back the next year? A. No, sir. He asked me to come back, but I didn't go with him. I got two or three letters asking me to come back with him as watchman. He wrote me a letter up here in February. My mother forwarded it to New York. I got it in New York. I wrote him a letter and said I didn't want to go with him.

Q. You left the vessel on your own accord, and you could have gone back on that very vessel if you wanted to? A. Well, he wasn't on the same vessel. I think he got demoted to the John W. Gates.

Q. You could have gone on the Gates with him? A. Yes.

Q. You voted in the election; didn't you? A. Yes, sir.

Q. And you remained on the vessel after the election? A. Yes, sir.

Q. No one ever threatened to fire you; did they? A. No, sir.

Q. No one told you that there was any Company policy against the Union? A. Sir?

Q. No one told you there was any Company policy against the Union? A. No.

Q. In other words, the Captain was expressing his own ideas when he was talking to you?

Mr. Belkin: I object.

Trial Examiner Leff: Sustained.

A. Well, he was talking about the Company. He was talking for the Company. I mean—

Trial Examiner Leff: The witness's comments after I sustained the objection are stricken from the record.

Q. (By Mr. Ray): Now, at any time during these conversations, Ralph, did you express to the Captain or any other officer on the vessel your ideas about the Union? A. I told him the Union helped my father in the steel mills. So, I said, "If it helped my father it will help me, too." So I joined.

Q. Did you say anything else? A. That is all.

Q. Now, tell us, Ralph, whether the conversation the Captain had with you adversely influenced your feeling for the Union or against the Union?

Mr. Rosenfeld: Objection.

Trial Examiner Leff: Objection sustained. Doesn't that call for a conclusion?

Mr. Belkin: It is irrelevant to the issues here.

Mr. Ray: If the Trial Examiner please, it is certainly one of the elements of interference, and coercion is the result. I agree with you, because we had this matter pretty thoroughly threshed out in the Midland case, that if interference exists, that interference if it stops short of a certain result, that this can't amount to interference. But certainly the result is one of the elements.

Trial Examiner Leff: I mean, how could you expect a witness to understand and answer a question: "Did it adversely affect you?"

Mr. Ray: Well, let me reframe it, then.

Mr. Belkin: It isn't a question of reframing.

Mr. Hinslea: Let him answer the question.

Trial Examiner Leff: I will sustain the objection to that question. Of course, you are privileged to ask another one.

Q. (By Mr. Ray): Did the Captain's conversations with you cause you to vote against the Union?

Mr. Rosenfeld: Objection.

Mr. Belkin: Objection.

Trial Examiner Leff: I will sustain that objection on the ground that any answer would divulge the secrecy of the ballot.

Mr. Ray: The election is over, if the Trial Examiner please.

Trial Examiner Leff: I know.

Mr. Belkin: And, further, if the Trial Examiner please, it is for the Board to decide whether it adversely affected this man's vote, and also the other members of the crew. The question is most improper.

Q. (By Mr. Ray): At what stage of the proceedings did you tell the Captain that because the Union helped your father, it could help you? A. It didn't relate to my father.

Q. No. At what time during these conversations that you have been talking about now did your statement to the Captain occur? A. You mean when I told him about that?

Q. Was that your first conversation, or somewhere along the line? A. Somewhere along the line.

Q. After the Captain had said these things that you say he did say? A. Yes.

Mr. Hinslea: The stenographer can't put the nod of your head on paper.

The Witness: I am sorry. Yes.

Mr. Ray: That is all.

Mr. Belkin: That is all.

Trial Examiner Leff: Were you known as an organizer aboard the vessel?

The Witness: No, sir.

Trial Examiner Leff: All right. Any further questions? The witness is excused.

Mr. Rosenfeld: Just a minute, Mr. Examiner, please.

Mr. Belkin: All right, Ralph.

(Witness excused.)

Mr. Belkin: I will now call Arno Weissflog.

ARNO EDMOND WEISSFLOG, JR., a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Q. (By Mr. Belkin): What is your full name? A. Arno Edmond Weissflog, Jr.

Q. Will you spell that, please? A. A-r-n-o W-e-i-s-s-f-l-o-g, Jr. The middle initial is E. 2556 North Orianna Street, Philadelphia, Pennsylvania.

Q. Were you at any time employed by the Pittsburgh Steamship Company? A. Yes; I was from the end of March to June 28.

Q. What year? A. 1944.

Q. On what ship did you sail? A. Samuel F. B. Morse.

Q. What was your job aboard ship? A. I was watchman.

Q. Who were your supervisors? A. Captain C. Gerlach, Herbert Todd, Chief Officer; A. Zyp, 2nd Mate; whose watch hour was later changed to Chief Mate's watch. I forget the 3rd Mate's name.

Q. Do you recall the names of the licensed personnel in the engine room crew? A. No; I don't recall their names.

Q. Were you a member of the N.M.U. while aboard that ship? A. Yes; I was.

Q. Did you participate in the Union's organizational drive? A. I did.

Q. Just what did you do? A. I organized the majority of the members on the ship, on the overtime question, the rotary hiring, trying to get vacations with pay, 10-month guaranteed year, and so forth.

Mr. Hinslea: Wait a minute. Will you repeat that?

The Witness: Rotary hiring; fighting for vacations with pay; overtime; no cleaning of bed quarters by the deck department; no lookout while—lookout while the men were—they had the practice of not having a lookout while the ship was being battened down. We were fighting against such things as that. Better food; increase of the personnel in the stewards' department; the general welfare for the ship's crew.

Q. (By Mr. Belkin): While you were aboard the ship, did you receive any Union literature? A. I did.

Q. Did you distribute that among them? A. I distributed all the leaflets, and the Pilots and material that was shipped to the ship.

Q. What is the Pilot? A. The Pilot is the official organ of the National Maritime Union.

Q. You mean by that, their publication? A. Yes; their publication every week.

Q. Did any material come aboard the ship of the N.M.U. which did not come through you? A. There was a pamphlet: "N.M.U. Fights Jim Crow," that was distributed. It is an N.M.U. pamphlet. The Captain received the pamphlet and later gave the pamphlet to the watchman on my watch, who came down and distributed the pamphlet among the crew and myself.

Q. Did the watchman, himself, give you a pamphlet? A. He gave me the pamphlet, and he told me the interest of the Captain is pro-N.M.U.

Q. Who is the watchman?

Mr. Hinslea: I object to that. It is not responsive to the question, and it is strictly hearsay.

Trial Examiner Leff: What the watchman told the witness?

Mr. Hinslea: What the watchman told him, that the Captain was strictly—

Mr. Belkin: I would like to be heard on this issue, because it will come up again. If it were to—

Trial Examiner Leff: I mean, it is only on what the watchman told him. It would be hearsay insofar as establishing whether or not the Captain was pro or anti-Union. It will be simply evidence for that limited purpose that I have indicated.

Q. (By Mr. Belkin): Did you discuss with the watchman the fact that he was giving you this pamphlet? A. Yes; I discussed that that he was giving the pamphlet. The only reason the Captain was giving the pamphlet to the crew members was to raise up racial prejudice that had already been—

Mr. Hinslea: I object to that.

Q. (By Mr. Belkin): Just a minute, Arno. You didn't get—

Mr. Hinslea: I move that be stricken.

Trial Examiner Leff: The motion is granted.

Q. (By Mr. Belkin): Arno, let's direct our attention to this conversation with the watchman who gave you this pamphlet. Do you recall when that occurred? A. It was about the middle of April, I think.

Q. And was anyone else present at the time? A. He came right into the forecastle and gave it. There were four or five fellows around.

Q. Do you recall who they were? A. One was an old-time watchman. He was on the 6 to 2. I don't remember his name. There was Ed Sarey. There was John DeLacey. I don't know the other fellows. I think there was one fellow by the name of Larsen.

Q. What, if anything, did the watchman say to you when he gave you that pamphlet? A. All he told me was that the Captain is pro-N.M.U., and he is issuing N.M.U. pamphlets.

Q. What if anything did you say to him? A. I told him that the N.M.U. was not distributing the pamphlet.

Q. Now, Mr. Weissflog, did you at any time while you were aboard this ship see what has been marked for identification as Board's Exhibit 2? A. Yes. It was posted on the bulletin board, and distributed to the crew.

Q. Were these red marks in pencil on it at the time? A. No.

Trial Examiner Leff: Incidentally, did you have any colored people working on the ship?

The Witness: No.

Q. (By Mr. Belkin): When did you see that? A. Oh, some time after May, the first week in May, or so.

Q. I will now hand you what has been marked for identification as Board's Exhibit 3, and ask you if you have seen this at any time.

(Thereupon the document above referred to was marked for identification Board's Exhibit 3.)

A. Yes; I saw it just before the election.

Q. Where did you see it? A. In the mess room. And it was distributed among the crew members, on their bunks.

Q. Did you see anyone distribute it? A. No; I didn't.

Q. Where did you find it? A. I found it on my bunk; and I also saw it in the mess room on the bulletin board.

Mr. Hinslea: Your Honor, I would like to have this introduced, because he keeps asking these people if they saw it, and where it was. It isn't introduced.

Trial Examiner Leff: Well, he feels that he hasn't laid the foundation yet.

Mr. Hinslea: I can't cross examine him on it.

Mr. Belkin: Well, I am willing to offer it at this time. I think that point is immaterial. The counsel for the Company has seen it, and he can cross examine upon it if he wishes. I am sure he can't deny its authenticity.

Trial Examiner Leff: Nobody has attempted to. Why don't you show it to counsel and see whether counsel is willing to have it—

Mr. Hinslea: I have seen it.

Mr. Belkin: If counsel feels that way about it, I have no objection, and I will offer in evidence at this time what has been marked for identification as Board's Exhibits 2 and 3.

Trial Examiner Leff: Is there any objection?

Mr. Hinslea: I have no objection, except that it ought to be understood very definitely that there were no marks on these—no red underlining or side marks on this letter at the time it was given to the men.

Mr. Belkin: Exactly. I intend to show—

Mr. Hinslea: We don't know who did that.

Mr. Belkin: I intend to show how the pencil marks came on those documents. That is why I was waiting to offer them at a later date, anticipating the objection by counsel.

Trial Examiner Leff: They will be received without the markings.

Mr. Hinslea: I would be glad to furnish letters without markings.

Mr. Belkin: I will take advantage of the offer.

Trial Examiner Leff: Board's Exhibits 2 and 3 are received in evidence.

(The documents heretofore marked Board's Exhibits 2 and 3 for identification were received in evidence.)

Mr. Hinslea: We have agreed, Mr. Examiner, that we could substitute that Exhibit with letters without markings.

Trial Examiner Leff: Unless they become pertinent.

Mr. Belkin: The markings are not pertinent. I want to identify the markings to explain just how they got on the document.

Trial Examiner Leff: Can you do it by a statement? Are they your markings?

Mr. Belkin: No; they are the markings of Frank Jones, Port Agent of the National Maritime Union. They are his own markings, and were not on the documents when these men saw them. Since they were the only copies I had, I had to offer them in that fashion.

Trial Examiner Leff: Very well. The markings will be disregarded.

Mr. Belkin: I will be glad to take that and stipulate upon it, if you wish, or take any other—

Mr. Hinslea: Surely.

Q. (By Mr. Belkin): Mr. Weissflog, while you were on board the Morse, did you at any time discuss the Union with any of your supervisors? A. I discussed the Union

organization with the Chief Engineer. The Chief Engineer would attack all the proposals. He claimed that we were lving to the membership on the question of rotary hiring. We were lying to the membership on the question of the $1.25 hour for fit out and lay up; that we were just slandering the legitimate seamen on the Great Lakes; and the only reason we were up there was to drive the old-time Lake seamen off the Lakes and put Communistic Red stooges from the salt water on. They were all his remarks.

Q. When did he make these remarks to you? A. He made these remarks about the middle of April—the middle of April, sometime.

Q. Where? A. In the mess room. He would generally make the remarks in the mess room in front of other members of the Union—other members of the crew.

Q. Do you recall who the people were? A. Ed Sarey, the cook, the cook's wife, some of the engineers were there. They would always participate in the discussions.

Q. Did you at any time discuss the Union with the Captain? A. I discussed the Union with the Captain when—in Conneaut one time when I came up on the ladder, and the Mate attacked me. After the Mate argued with me, the Captain came up later while we were out at sea, while we were going out. He told me that I was the only guy that he wanted to attack, after I asked him why he didn't ask the other members while they were late, if they were late. He told me that he was glad to get rid of me; that I was nothing but a Communist, and corrupting the morals of the young seamen on the lakes.

Trial Examiner Leff: May I suggest this, Mr. Witness: When you answer questions just try to answer the questions directly. That last question simply called for a yes or no answer. It will be easier for us to follow if you just answer them simply, and let the attorney draw out the information he wants. He is very competent and capable to do it.

The Witness: Yes, sir.

Q. (By Mr. Belkin): Now, referring to this conversation with the Captain about which you were telling us, Mr. Weissflog, you told us when it occurred. You didn't tell us where. Do you recall where? A. It occurred in the deck watchman's quarters.

Q. Who, if anyone else, was present? A. Well, there were a few of the watchmen, and a few of the deckhands were in there.

Q. Will you tell us to the best of your recollection what if anything the Captain said to you, and what if anything was said to him? A. The Captain asked my why I—the Captain told me that I was supposed to be back an hour ahead of time. I asked the Captain why he didn't direct his attention to the other men. They were right there. He said, "I am not worried about the other men. All I am worried about is you. You are the organizer on this ship, and you are the only one that I am concerned with. I will speak to them whenever I want to."

Q. What if anything did you say in reply? A. I told the Captain that if he wanted me back on board the ship at a certain time, he would have to give me the information. Being there was no sailing notice posted on the ship, I was free to come back at any time the ship was in port—that is, unless I was on watch, or had to go on watch.

Q. Now, since we have mentioned the incident which occurred at Conneaut involving the boarding of the ship by you and some other people, would you be good enough to tell us just what the circumstances were that surrounded that incident? A. I went up to the Union Hall to get all the literature. About 10 or 12 of us went up to the Union Hall. We knew the ship—

Q. Who do you mean by "10 or 12 of us"? A. There were about 10 or 12 seamen from the ship who went in a crowd together. We went over to the other side, and visited the Union Hall. Uptown we met some of the officers and the Mates. Our primary purpose was to go to the Union Hall and bring back literature.

Q. What happened when you came back? A. When we came back the Mate was at the gangway waiting for me. He didn't say anything to any ıe else. He just told me that I was the one who was supposed to be back an hour ahead of time. He wasn't interested in anyone else.

Q. Were the other seamen who had come back with you present when he said that? A. No; they had gone to their forecastles and left.

Q. While you were there did he speak to anyone else? A. No.

Q. To your knowledge did he ever at any time speak to any of the other men who came back? A. He never did, because I asked them afterwards. The members told me that the Captain or the Mate never mentioned it to them.

Q. Now, Mr. Weissflog, what had happened to the ship, if anything—by that I mean, had it been moved away from the dock while you fellows were in town? A. The ship moved from the oil dock to the fuel dock. We saw the ship as it went up. We knew as soon as the ship had the coal berth, she would be ready to leave within a half hour or so, and we immediately came back.

Q. You came back well within that half hour? A. Well within that half hour.

Q. How long after you boarded the ship did it pull out of dock? A. About 40 or 50 minutes.

Q. While you were on board ship, Mr. Weissflog, did you have any other conversations with the Captain or any of the other members of the licensed personnel of the ship, in addition to the ones you have told us about? A. Yes; I did. I was in the mess room one time—

Q. Give us a date on that, to the best of your recollection. A. I think it was around June 1. I am not quite sure. Around May or June.

Q. Who else was present in the mess room? A. The cook, and the cook's wife, and a fireman—firemen who were eating at the table, some of the deckhands, the deck watchmen.

Q. This, of course, is your regular mess time? A. That's right.

Q. And this was the regular group that ate in your mess? A. The regular group.

Q. Tell us what if anything the Captain said to you at that time, and what if anything you said to him? A. I was speaking to the members. The Captain came in. The Captain pulled me by the arm, and he said, "I am not going to allow you—"

Q. Just a moment. Could you just tell us what you were saying to the men? A. I was speaking about the Union to the men, and about the conditions in general, the food and so forth.

Q. Proceed. A. The Captain came in from his mess room, and he grabbed me by the arm and told me I had no

business talking to anyone; he is going to stop me from talking to anyone aboard the ship. He tried to push me out of the mess room. I asked him if he meant he was going to stop me from organizing members into the National Maritime Union. He said, yes, he was going to stop me from organizing members into the National Maritime Union. I asked him that question twice. "I couldn't—I had to stop—"

Mr. Hinslea: Will you please go slow, I am trying to make notes. I can't keep up with that speech you are making.

Mr. Rosenfeld: I move to strike that last remark.

Trial Examiner Leff: I think the record should indicate that the witness is talking at a very extremely rapid rate.

Mr. Belkin: I admit that. Certainly, he should speak in a slower way. But the witness does not normally nor naturally speak in any manner except that in which he is speaking now. I want the Trial Examiner to take cognizance of that fact.

Trial Examiner Leff: I don't mean to be critical of the witness. I am just asking you to do it as a matter of cooperation for all of us.

Mr. Belkin: The witness is unlettered, and somewhat emotional, and he, naturally, speaks in his normal manner under those conditions.

Trial Examiner Leff: I don't think any apology is required.

Mr. Hinslea: My notes have taken me down to—

(Record read by the Reporter.)

Trial Examiner Leff: Let's proceed.

Q. (By Mr. Belkin): You were telling us, Arno, were you not, what was said to you at that time. Will you continue, please. A. The Captain forced me out of the mess room. He told me he didn't want to catch me in the mess room again talking to the members. I left the mess room, and went to my quarters.

Q. Did you at any other time hold any conversations with the Captain? A. Yes; I did.

Trial Examiner Leff: Before you go into those conversations—when people are in the mess room, are they on working time?

The Witness: No, they are not on their working time.

Trial Examiner Leff: Are they on their own time?

The Witness: They are given their own time to eat. The majority of them are off duty. I was off duty. The mess room is separated from the galley where the cooks perform their duties.

Trial Examiner Leff: All right. Proceed.

Q. (By Mr. Belkin): I believe I was asking you, Mr. Weissflog, if there were other conversations with the Captain. You said, "Yes." I want to ask at this time when and where those conversations, if any, took place. A. There was one conversation where I went into the fireman's deck house to get my cap.

Q. Do you recall just about when that occurred? A. It was just a few days after the election. We were nearing Conneaut.

Q. The election occurred on June 6? A. I think our ship voted on the 6th, early Sunday morning.

Q. Will you tell us what if anything was said by the Captain to you? A. I went into the fireman's quarters—that was midship—to get a cap I had left there before. When I went in one of the firemen started talking to me. I sat down for a few seconds. The Captain came in to the fireman's quarters and grabbed me by the arm, violently, and told me to get out of the fireman's quarters. I told the Captain that the fireman had invited me in to sit down and talk; and that, therefore, I had a legitimate reason to speak to the members. The Captain told me he wanted me to get out; that I had no reason to speak to the members in the engine department; that he was going to stop me from speaking to anyone. We got outside of the mess room—or, he pulled me out of the fireman's quarters, and I received a little scratch on the arm from him. I told him that the Captain had no right to manhandle any member of the unlicensed crew. While we were out on deck, the Captain called me a no good bastard; that I was no good, and I ought to go back to the salt water where I belonged. I then told the Captain that I want to quit; that I don't feel safe on board the Samuel F. B. Morse.

Q. Did you then leave the ship? A. I left the ship in Fairport.

Q. You testified previously that there was 2nd Mate aboard the ship named Zyp? A. Yes; I was on board on Zyp's watch.

Q. He was your supervisor? A. He was my supervisor.

Q. Did you ever discuss the Union with him? A. The wheelsman and the 2nd Mate would, when I was standing lookout in the wheel house, they would always refer to me as a Communist—

Mr. Hinslea: Now, that isn't responsive to the question.

(Last question read by the Reporter.)

Trial Examiner Leff: On a question of that kind you can answer simply yes or no. Then counsel for the Board will fix the time and place of the conversation, and then we will get what was said by the parties. Then we can proceed in an orderly manner. This way it confuses things when you try to throw everything into a single answer.

Q. (By Mr. Belkin): You just testified "yes." A. Yes.

Q. Do you recall when that conversation occurred? A. I don't just recall when the conversation occurred.

Q. Was this before or after the election? A. Before the election.

Q. Can you tell us how long before, to the best of your recollection, Mr. Weissflog? A. About a month, or something.

Q. Where was it that this conversation took place? A. It was in the wheel house.

Q. Do you recall if anyone else was present? A. The wheelsman.

Q. Now, Mr. Weissflog, what if anything did the 2nd Mate Zyp, say to you, and what if anything did you say to him? A. Zyp would ask me about the Union. He would bring out the question of the N.M.U. pamphlet that was distributed. We would discuss the pamphlet. Zyp said he would never sail with a nigger. So I told him—I said, "You know you are in a pretty good position. If you are friendly with your brother, maybe he could do something about it." I said, "Your brother is personnel manager, and I understand they have negroes on other ships." Then he blew up and called me all kinds of names.

Q. What if anything did he say to you? A. He called me nothing but a Communist organizer and agitator; and that I should go back to salt water.

Q. What if anything did you say to him? A. Well, I was trying to discuss things with him sensibly. But he could never do it.

Mr. Belkin: You may cross examine, Mr. Hinslea.

CROSS EXAMINATION.

Q. (By Mr. Hinslea): How long had you been sailing before March, 1944? A. Since 1933.

Q. Always on the Great Lakes? A. Salt water.

Q. When did you first come to the Great Lakes? A. March, 1934—1944.

Q. This was the first ship you were ever on on the Great Lakes? A. That's right.

Q. And were you appointed organizer before you got aboard the boat? A. I volunteered as an organizer.

Q. Before you got aboard the boat? A. That's right.

Q. Did you volunteer down in New York to come up here and help organize the Pittsburgh Steamship Company? A. That's right.

Q. Now, you were on the— A. Samuel F. B. Morse.

Q. Yes. I know that. What I want to get at is: You were on the 1st Mate's watch first— A. 2nd Mate's watch first.

Q. What watch was that? A. The 2 to 10—no; 10 to 2.

Mr. Hinslea: Now, Mr. Examiner, I don't object—I have not objected to the witness testifying, but I do object to—and I don't mind them testifying to some things he did. But I do object to assistance from the sidelines.

The Witness: Who assisted me?

Trial Examiner Leff: I haven't observed any assistance.

Mr. Hinslea: While you were making notes several of the sailors corrected him on what watch he was on. It was quite audible. I heard it from the other side of the table.

Trial Examiner Leff: I don't think any of the audience should make any signs while the witness is testifying. Any such conduct is improper. I did not observe any this time.

Q. (By Mr. Hinslea): What watch is the 1st Mate's watch? A. 6 to 10.

Q. And how long were you on the—what watch is the 2nd Mate's watch? A. 10 to 2.

Q. And what is the 1st Mate's watch? A. 6 to 10.

Q. And what is the 3rd Mate's watch? A. I don't know—I am not experienced with the fresh water. I forgot all about them already. There is the 6 to 10, 10 to 2, and 2 to 6.

Q. I agree with that. We have no controversy on that. Now, are you sure that the 1st Mate stands the 6 to 10 watch? A. That's right.

Q. And the 2nd Mate stands the 10 to 2 watch? A. That's right.

Q. And the 3rd Mate would stand the 2 to 6 watch? A. That's right.

Q. Now, you were first on Zyp's watch from 10 to 2? A. That's right.

Q. And how long were you on that watch? A. I was on there until about—until after the election when I switched to the Chief Mate's watch.

Q. When did you finally get off? I don't have a note of that? A. I think it was the 28th of June.

Q. That was sometime after the election; was it not? A. That's right.

Q. And isn't it a fact that you made a couple of trips after the election before you got off? A. That's right. But I wanted to stay on.

Q. No. That doesn't answer my question. I say: Isn't it a fact that you made a couple of trips after the election? A. That's right.

Q. Didn't you testify on direct examination that the Captain took you by the arm and put you out of the fireman's room a few days after the election, and that is why you got off? A. Well, right after—I don't know just how many days. I didn't keep a log book of it. But after the election he pulled me—it was somewhere around—I guess it was the 27th or 28th when he pulled me out; out of the fireman's forecastle.

Q. Then you were wrong about a few days? A. By a few days I don't mean just two.

Q. What do you mean? A. A week and a half, two weeks.

Q. Well, 14 days to you is a few days? A. Well, all right. I think it was the 28th.

Q. Now, when did you start to organize the crew of the Samuel F. B. Morse? A. I started about a week or two after the ship left the dock.

Q. When was that? A. About two weeks in April.

Q. You mean to say that the Morse didn't leave the dock until the second week in April? A. Somewhere around that time. I don't know the exact date.

Q. When was the first time you had any conversation, after you started organizing, with the Captain? A. With the Captain?

Q. Yes. A. The first time I had any conversation with the Captain was in Conneaut when—

Q. When was that? A. Well, it was sometime in May, I guess.

Q. May? A. I don't know just the exact time.

Q. So you had been organizing at least two or three weeks before you had your first conversation with the Captain? A. That's right.

Q. Now, when was the first time you had your conversation with Zyp, after you started to organize? A. We had plenty of conversations with Zyp about a month or so later.

Q. After you started to organize? A. After I started to organize.

Q. Now, who is this wheelsman that you talked about on Zyp's watch that was in the pilot house when you and Zyp were talking? A. I don't know his last name. His first name was Don. He held a 1st or 2nd Mate's license. I don't know just what.

Q. Did he take part in the conversations? A. Yes; he did.

Q. Did he call you a Communist? A. He certainly did.

Q. Did he call you a saltwater bastard? A. He certainly did.

Q. What else did he call you? A. He expressed his disapproval of the entire organization.

Q. Did you try to convert him over? A. I certainly did, without success.

Q. Did you accept all this name calling that he gave you? Did you allow him to call you a bastard without talk-

ing back? A. I made him apologize, but I didn't use any violence with him.

Q. You made—you convinced him he was wrong in calling you that? A. That's right.

Q. How about Zyp? Did you make him apologize? A. I never had Zyp apologize because I didn't feel I was in a position to have an officer get into any arguments—to have any arguments with an officer while I was serving on the ship, for fear of getting fired.

Q. You didn't want to get fired? A. That's right.

Q. And you would be perfectly willing to take all these names because you were worried about being fired? A. That's right.

Q. Now, what other names did he call you? A. He generally called me a Communist; no good Communist bastard; a salt water stiff; trying to bring salt water men up here, and so forth.

Q. Anything else? A. It was all along the same lines.

Q. Did he ever call you a s.o.b.? A. No; he never called me a s.o.b.

Q. You wouldn't let him do that? A. I may during the campaign.

Q. Beg pardon? A. I may, during the campaign.

Q. Oh, I see. But you wouldn't after the campaign? A. I am sure I wouldn't if it was in a place that I wasn't under his jurisdiction.

Q. You wouldn't let him call you that on shore? A. I certainly would not. No one.

Q. Now, you said something about telling somebody, an officer, about organizing the crew on overtime, rotary hiring, vacations with pay, and night work. Who did you talk to about that? A. The Chief Engineer.

Q. Well, then, you and the Chief were discussing the relative merits of unionism? A. That's right.

Q. And you were expressing your opinion, and he was expressing his opinion? A. If you want to call it his opinion.

Q. Yes. You didn't agree with it? A. I certainly did not.

Trial Examiner Leff: Well, who initiated that conversation?

The Witness: He would. He had a great delight in soap boxing.

Trial Examiner Leff: Who started this conversation?

The Witness: The Chief Engineer, when I would give him a Pilot, or something, on deck, he would come and stop me and talk to me about things.

Trial Examiner Leff: Did you distribute Pilots to the officers?

The Witness: To the Chief Engineer, or anyone who accepted that.

Trial Examiner Leff: Were you trying to organize the licensed personnel?

The Witness: I certainly was not, but I thought they should know what is going on.

Mr. Ray: Mr. Hinslea is talking about a specific conversation.

Trial Examiner Leff: That conversation that you spoke of in response to Mr. Hinslea's question, who started that conversation?

The Witness: The Chief Engineer..

Q. (By Mr. Hinslea): When was that? A. It was about three weeks, after we left the mess room.

Q. Well, did he bring up all these items that you have spoken about, himself, or did you bring them up? A. No; I didn't say he brought them all up.

Q. How did he start the conversation? A. There were Pilots in the mess room. I distributed Pilots when I came aboard. He would pick them up. If there was something in there about overtime for firemen, he would discuss it—would discuss it with me. He used to take the Pilot and rip the Pilot and the Constitution from one end to the other. Then he would come out and say, "Jesus! I got you now." He would start discussing things with me.

Q. And, of course, you took violent opposition to that? A. I certainly did. Not physical violence.

Q. I didn't say physical violence. I said violent. That can be verbal as well as physical. Now, it is a practice, Mr. Weissflog, isn't it, for not only the unlicensed personnel, but the officers, to gather in the mess room at certain times to get coffee and midnight lunch? A. Whenever it was there; yes.

Q. I beg your pardon? A. Whenever they had a night lunch they would gather there and drink coffee, and eat midnight lunch.

Q. Is there any significance in your remarks? A. Sometimes it wasn't there.

Q. You mean sometimes you didn't get a night lunch? A. That's right.

Q. Now, how about gathering at 10 o'clock in the morning? Did you have coffee at 10 o'clock in the morning? A. No; we ate—when I was on the 10 to 2 I ate before that. I would go back and get my own coffee before 10.

Q. But you were allowed to go back and get coffee before you went on watch? A. That's right.

Q. And others would be there, too; wouldn't they? A. That's right.

Q. As I understand the Pilots were lying there in the mess room. Nobody ever told you that the Pilots couldn't be in the mess room; did they? A. That's right.

Q. So this conversation arose by the Chief reading something about firemen getting overtime? A. That's right.

Q. And you and the Chief discussed it? A. That's right.

Q. Now, what about this benefit that you were talking about—I have a note here. Maybe I am wrong about it. That no lookout should be on the ship while you were battening down. What do you mean by that? A. I said a lookout should be kept. No lookout would be kept while we would leave port at night. I would explain it to Zyp—I was supposed to be on lookout for the safety of the ship. I would bring it up to Zyp that according to law I was supposed to be on lookout instead of battening down the ship. Those were the conditions we were trying to get.

Q. What is the law, Mr. Weissflog? A. I am sure that under the law—

Q. No; not what you are sure of. I am asking you what is the law? A. The law requires that a lookout shall be held going in and out of harbors.

Q. Is that all that it requires? A. That is all I know of.

Q. I see. A. It requires a mate and a pilot, and so forth.

Q. No. I am asking you about a lookout. When does the law require a lookout? A. The law requires a lookout, as far as I know, from sunset to sunrise; and in the war zone every day.

Q. Well, now, you are not in the war zone. A. From sunrise to sunset.

Q. In clear weather? A. Foggy weather.

Q. No. No. I asked you about clear weather. A. In clear weather from sunset to sunrise.

Trial Examiner Leff: How is all this relevant on cross examination?

Mr. Hinslea: I am just trying to inquire whether or not he was agitating something that was not within the purview of the law. That is all.

Trial Examiner Leff: I don't understand.

Mr. Belkin: I don't think Mr. Hinslea understands either.

Mr. Hinslea: I have had a hard time following this witness, I will admit that. I have had an awfully hard time keeping my notes. I know the difficulty I have had trying to keep my notes.

Q. (By Mr. Hinslea): Now, this episode at Conneaut, was the ship about fueled when you got aboard? A. No; it wasn't.

Q. It was not? A. No.

Q. How long does it take to fuel the Samuel F. B. Morse? A. It depends if they have the coal ready and so forth. I would say about half an hour from the actual start.

Q. Now, how much of the Morse was unloaded when you left the ship? A. She wasn't unloaded at all.

Q. Just started? A. Just docked. I was off watch, and I left. Received our pass—

Q. How long did it take to unload her at Conneaut? A. I imagine about four hours.

Q. So you were uptown at least four hours? A. That's right.

Q. Did you know that it took her four hours to unload before you left that day? A. I don't know anything. All I know is what they told me.

Q. I see. Was this the first trip? A. The first trip in Conneaut.

Q. Now, during your experience on the Lakes, did you ever see a board where they had posted when the ship would be unloaded? A. No; but they are supposed to—

Q. Now, wait a minute. Just answer my question.

Mr. Belkin: He answered the question. Let him finish.

Trial Examiner Leff: No. He said what they are supposed to do.

The Witness: I said, no.

Mr. Belkin: Qualifying his answer. I think he should be permitted to finish that answer, and explain it.

Trial Examiner Leff: You can bring it out on redirect.

Q. (By Mr. Hinslea): Now, how many ships have you been on since the Samuel F. B. Morse, on the Great Lakes? A. None since the Samuel F. B. Morse on the Great Lakes.

Q. You went right back to salt water? A. That's right.

Q. And you have been brought out here for this case? A. That's right.

Q. And you are going back to salt water? A. That's right—I think, if I could get back on a Pittsburgh ship I would go back.

Q. Now, how old are you? A. 28.

Q. Are you single or married? A. Single.

Q. What is your draft—

Mr. Belkin: I object to that.

Trial Examiner Leff: How is that relevant?

Mr. Hinslea: I am just wondering. All right. It may be stricken.

The Witness: Off the record, do you want to know?

Trial Examiner Leff: No. You don't answer anything but questions that are put to you. I think we have had enough vital statistics on the witnesses.

Q. (By Mr. Hinslea): Now, when you went up on the ladder on this episode of coming back when she was fueling, how many men were with you? A. Nine or ten.

Q. Were you the first one up or the last? A. Third or fourth, or somewhere in between.

Q. Did the Mate meet you at the top of the ladder? A. He was right there.

Q. There were six men behind you? A. Approximately.

Q. Did he call you by name, or did he just speak generally? A. He just grabbed me.

Q. Beg pardon? A. Grabbed me.

Q. He took ahold of you? A. That's right.

Q. Did you resent that? A. No; I didn't. I resented it, but I didn't say anything to him.

Q. Did he allow you to get on deck before he grabbed you? A. Yes.

Q. Was the Mate a bigger man than you are? A. No.

Q. Did he shake you? A. Not very much.

Q. Well, it isn't a question of not very much. A. He grabbed ahold of me. That is all.

Q. Did he twist your arm? A. No.

Q. Then he let these other fellows go along, and didn't say a word to them? A. That's right.

Q. Now, this watchman that you say brought pamphlets in, these N.M.U. pamphlets, who was he? A. His name was Don. He was a wheelsman on my watch. I don't know his last name.

Q. I thought you said he was a watchman? A. I said he was a wheelsman.

Q. I have a note that this watchman brought this pamphlet into the windlass room? A. I didn't say the windlass room. I said the forecastle.

Q. Where the sailors lived? A. He came from the wheelhouse to the forecastle.

Mr. Belkin: I believe the record will show that is what the witness testified to.

Mr. Hinslea: All right. I am not quibbling whether it is the windlass room or forecastle.

Q. (By Mr. Hinslea): His name was Don? A. That's right.

Q. Was he on your watch? A. That's right.

Q. He was the fellow you argued with? A. That's right.

Q. Then you said there was a fellow named Ed Sarey? A. Ed Sarey; yes.

Q. What did he do on the ship? A. He was a watchman.

Q. What watch was he on? A. He was on the 3rd Mate's watch.

Q. And this John DeLacy, what did he do? A. He was watchman. He was on the Chief Mate's watch.

Q. Who was Larsen? A. Larsen was deck watchman.

Q. Now, you are not familiar with the number of colored people that are employed by the Pittsburgh Steam-

ship Company? A. I know they have them on a few ships, but I don't know just the numbers, or—

Q. Now, this letter that you have identified as having seen—I think you said you saw one on the 1st of May? A. Around in May. The beginning of May.

Q. The other one was just before the election? A. Somewhere around that time.

Q. Now, did you receive copies of those letters yourself? A. They were lying on my bunk when I saw them.

Q. Well, they were mailed to you; weren't they? A. They were lying on the bunk. It was on the bunk, the letters.

Q. Don't you know they were mailed to all the unlicensed men? A. They were.

Q. How many conversations did you have with the Chief Engineer? A. We spoke quite often about the N.M.U.

Q. How many conversations? A. Say about nine or ten, possibly.

Q. Was it always in the mess room? A. Sometimes on deck.

Q. Did you usually have them when you gave him a Pilot? A. We used to play quoits on board. Maybe after we played quoits we would discuss the Union, and so forth.

Q. Now, when you had this conversation with the Chief Engineer in the mess room, the first conversation, you say the cook and the cook's wife were there? A. They were in the galley.

Q. Well, was it mealtime? A. It was the tapering off part. People were finished, sitting around.

Q. Well, the Chief Engineer doesn't eat in the mess room; does he? A. Where I had the conversation with him?

Q. The Chief Engineer? A. No; but he used to frequent the crew's mess room. That was his hangout.

Q. Well, did he go in the dining room and eat his meal, and then come out in the mess room? A. That's right.

Q. And he did that frequently? A. Sure. It was his hangout. He was there most of the time discussing things with the crew members.

Q. What, Union questions? A. Union questions; yes, sir.

Q. Continuously? A. Continuously; yes.

Q. Every day? A. Not every day.

Q. Well, every other day? A. I would say that he would be in the mess room one time every day during the time I was on that ship. Maybe it was for five minutes, ten minutes, or fifteen minutes. I don't know.

Q. And he always discussed the Union with you? A. That's right. That was his pet argument.

Q. And that was your pet? A. It certainly was.

Q. So you two gentlemen had no trouble discussing the Union? A. No, sir.

Trial Examiner Leff: When you had these talks with the Chief Engineer were other people around?

The Witness: Yes; there was always somebody around. In the mess room on board a ship there is generally someone in there.

Q. (By Mr. Hinslea): Well, now, generally, I want to know who was there. You are making some general statements here. I want to know who was there so I can produce them and see if you are stating the facts. A. Ed Sarey would be there.

Q. Always? A. Not always. Ed Sarey—

Q. Well, how many times was he in there? A. As many times as he can possibly get there, he would be there; because he was a progressive seaman. He believed in the N.M.U.

Q. Was he an organizer with you? A. No.

Q. Did you arrange that he be there when the Chief was there? A. I never arranged anything with him.

Q. What do you mean that he made a practice or effort to be there when you were there? A. Because he liked to come back at the Chief Engineer. He used to tell me, "I am going back to see the Chief Engineer if he is around the mess room."

Q. I see. So you could get into an argument with him? A. A discussion with him.

Q. I see. A discussion. And did the chief seem to have a pretty good working knowledge of your Union? A. According to the letters—he used to argue right down the line of the letter.

Trial Examiner Leff: What letters?

Q. (By Mr. Hinslea): You mean those letters (indicating)? A. Those letters. Those were important to him.

Q. The last letter wasn't until the 1st of June, so he couldn't argue that one? A. Along those lines.

Trial Examiner Leff: What would he argue about?

The Witness: One of the pet arguments was seniority, rotary hiring, which was a big question with the Pittsburgh Steamship. He didn't have to get that letter to discuss it. Because that was one of our points. We brought it out, not when the letter came out, but immediately when we started organizing.

Q. (By Mr. Hinslea): So he would take these letters and follow them very explicitly when he argued with you; would he? A. No.

Q. I thought that is what you said? A. I said he would argue on those lines—the answers in that letter, before the letter came out.

Q. Oh, I see. When the letter came out it merely confirmed what he had been saying? A. That's right. He was very delighted—

Mr. Belkin: I object to that question, and move that the answer be stricken. It is a conclusion.

Mr. Hinslea: It—he was there. He heard the whole thing. He is testifying—

Mr. Belkin: You are attempting to frame a—

Mr. Hinslea: No; I am not attempting to—

Trial Examiner Leff: I will let it stand. Proceed.

Q. (By Mr. Hinslea): Now, after your being late, coming back to the ship after fueling the first trip, were you back on time after that? A. I was never late. When I came back to the ship I definitely was not late. My watch was not on.

Q. Did anybody ever post a notice after the first trip? A. Never.

Q. Did anyone ever tell you when the ship was going to be out? A. Generally, we go to the Mate and say, "How long is the ship going to be here?" "Five to twenty-five hours. Go ashore." The beginning of the season they didn't know just when the ship was leaving.

Q. Well, isn't it a fact that the first trip you had—didn't you have some frozen ore; ore or coal freezing?

Wasn't there some difficulty loading that first trip? A. A little difficulty. Not something to delay the ship too long.

Q. Now, this episode of the Captain coming in the mess room, was that at a meal hour? A. No.

Q. When was that? A. After the meal hour.

Q. What time? A. About 1:30, I think.

Q. 1:30. Now, dinner is over on those ships about 12:30; is it not? A. That's right.

Q. And did you sit in this mess room for one hour? A. No; I had gone around the forecastle and washed up, and so forth.

Q. You were on watch then? A. When?

Q. 10 to 2? A. I changed to the Chief Mate's watch.

Q. Oh, this happened when you were on the Chief Mate's watch? A. Yes.

Q. I see. Did the cook allow you to sit in this mess room after 12:30, and come in and go out, and come in? How did they get their work done? A. When they cleaned up the mess room, the members were allowed to go in the mess room for 24 hours. That was the same as their recreation room.

Q. On the Morse then it is your position that after the cook got cleaned up, anybody off watch could go in the mess room and sit there and smoke and do anything they wanted? A. That's right.

Q. And the cook made no complaint about that? A. Well, the watchman used to wash up the cups and so forth, and keep things clean.

Q. Would that go on all afternoon on the Morse? A. Well, whenever you drank a cup of coffee, it was very polite to wash your cup.

Q. Did it go on all morning? A. Those that were off watch.

Q. What watchmen would clean the cups in the morning, or afternoon? A. Anyone who dirtied a cup. If it was a watchman, he would do it; if it was the Chief Engineer, he would go in and clean his cup.

Q. Let's assume you went in this galley about 11 o'clock in the morning. The cook is quite busy at that time. A. The people refrain from going in—

Q. Now, wait a minute.

Mr. Belkin: If you reframe the question, Mr. Hinslea, I think the answer is proper.

Q. (By Mr. Hinslea): At 11 o'clock the cook is busy getting dinner ready? A. That's right.

Q. You would be out in the mess room having coffee? A. If you wanted to.

Q. Would you take your cup through the mess room doorway over to the sink and clean up your cup while the kitchen force was getting dinner? A. That's right.

Q. And they would say nothing about it? A. That's right.

Q. And the Chief would do the same? A. That's right. And the Captain—

Q. And the Captain might do the same thing? A. That's right.

Q. And there might be eight or nine walking through the galley while the cooks were getting dinner? A. That's right.

Q. And the same for supper? A. That's right.

Q. Now, is it your testimony that the Captain came in on one occasion to the mess room, and actually took you by the arm and put you out of the mess room? A. That's right.

Q. Now, you never reported that to anybody? A. I reported it to Frank Jones, when I left the ship.

Q. You didn't make any report of it before? A. No.

Mr. Belkin: Let the record show that Frank Jones is the Port Agent here in Cleveland for the National Maritime Union.

Q. (By Mr. Hinslea): It never occurred to you to report this licensed officer, taking ahold of an unlicensed man, to the Coast Guard? A. It did occur to me.

Q. Why didn't you do it? A. Because I felt it would jeopardize my position to organize the ship while I was on there.

Q. It might be possible the Captain could have had a suspension of his license?

Mr. Rosenfeld: I will object to that. I think we should object to Mr. Hinslea's hypothesis.

Trial Examiner Leff: I will sustain the objection to that question.

Q. (By Mr. Hinslea): Now, after the election, the Captain again took you by force and put you out of the fireman's room; is that right? A. That's right.

Q. Now, the election was all over then; wasn't it? A. That's right.

Q. Did you do anything about it, except quit? A. We kept organizing. The ship was kept intact. It was a well-organized ship, and I was going to continue for the rest of the season organizing.

Mr. Hinslea: Read the question.

(Question read by the Reporter.)

A. No; I stood on two trips after that.

Q. You made no complaint to anybody? A. No.

Q. Now, just what did the Captain say to you when he took you by the arm and forced you out of the fireman's room? A. The Captain told me he didn't want me in the fireman's room. He was going to stop me from talking to any member in the fireman's—in the aft gang. He told me to get to hell out, and he forced me out.

Q. Did he say anything else? A. He called me a no good bastard, and told me to get out. He told me he wished I would get off.

Q. Now, which did he say? Did he say you should get off, or that he wished you would get off? A. He told me he wanted me to get off. Not to get off. But he said, "I would like to see you get off."

Q. But you didn't get off? A. I didn't make up my mind until after that.

Q. Two trips later? A. No.

Q. I thought you said you didn't get off until two trips later? A. No. I thought I—I thought you were referring to two trips after the election. I got off the trip that the incident happened.

Q. In the fireman's room? A. That's right.

Q. You never invited the Captain on the dock with you; did you? A. No, sir.

Q. Is he a big man? A. He is an elderly man. Tall. Heavy-set.

Q. Now, this conversation that you had with Zyp, that occurred before or after the election? A. Before the election.

Q. Can you tell me how much of a period before the election? A. I'd say it was around—about four weeks after we left the fit out, around that time.

Q. That would be about the latter part of April? A. Somewhere around that time. The beginning of May.

Q. Do you know where the ship was? A. No; I don't remember. It was on the lakes some place.

Q. Was it day or night? A. Daytime.

Q. Where were you? A. I was in the—I was in the wheelhouse with him.

Q. Did you stand your watch in the daytime in the wheelhouse? A. When we would get out of the narrows of the river he would call me up.

Q. When you would get out of the river into the lake he would call you up in the pilot house? A. No; if we were down in the narrows of the river he would call me up.

Q. Do you know where Port Huron is? A. Yes.

Q. Well, now, would you stand a watch in the forecastle out in Lake Huron, or up in the pilot house, in the daytime? A. In Lake Huron?

Q. Yes. A. I would stand it—on Lake Huron we wouldn't stand a watch in the daytime.

Q. What would you do? A. We would work.

Q. On deck, with the deckhands? A. On deck.

Q. When you got to Port Huron did you keep on working? A. You mean in the river there, the narrows?

Q. When you got to Port Huron and started down the St. Clair River? A. We would go up on the forecastle head and stand watch there. A lot of times I would go in the wheelhouse and relieve the wheelsman for an hour or two.

Q. In the rivers? A. In the rivers.

Q. When did you learn to steer in the rivers? A. I steered ships in the Belgian Congo, and the rivers.

Q. No. No.

Trial Examiner Leff: That is responsive.

A. (Continuing): The Mississippi, Columbia River. I took ships into the beachheads and stuff like that. I am sure I could steer a ship in the river.

Q. When did you first take the wheel on the F. B. Morse, on either the Detroit River, St. Clair River, or Soo? A. I never took it on the Detroit River.

Q. How about the St. Clair River? A. I don't know too much about the rivers. I took it in Huron a few times. That place in Port Huron.

Q. You took it on Lake Huron when you were out in the Lake? A. No. It is a narrow channel near Huron—it is a city; isn't it?

Mr. Belkin: If the Examiner please, I think this entire line of questioning is most improper, immaterial and irrelevant. I can't see—

Mr. Hinslea: It isn't irrelevant.

Trial Examiner Leff: How is it relevant?

Mr. Hinslea: I am trying to develop when he had this conversation with Zyp. I am going to prove that watchmen don't stand their watch in pilot houses in the daytime. I have a right to interrogate him how he got up in the pilot house.

Trial Examiner Leff: Proceed.

Q. (By Mr. Hinslea): Now, when did you ever take the wheel for one or two hours from the wheelsman while you were on watch in the narrows of any rivers? A. I used to go up many times—

Q. When was the first time? A. I don't know just when. I never marked it down. I don't know.

Q. How long would you take the wheel? A. I would start with a half hour. Relieve him for coffee so he could get coffee, or things like that. I would take it for three-quarters of an hour, and go back. Things like that.

Q. Did you ever take it for two hours? A. Never for two hours.

Q. For one hour? A. Maybe an hour.

Q. Now, you never took the wheel in the Detroit River? A. I took the wheel partly in the Detroit River.

Q. What part of the Detroit River? A. As we got to the approaches of the city.

Q. The city of what, Detroit? A. Detroit. I never take it into the narrow places, or anywhere where there was current. The Captain said he would have the wheelsman relieve me, and I would go back to the forecastle then for lookout.

Q. Then how did you steer in the river? A. What do you mean, how did I steer?

Q. How did you steer the ship? A. By landmarks, wherever the Captain directs you.

Q. What kind of landmarks? A. Buoys, beacons, ranges.

Q. Is that all? A. Courses, if he gives it to you.

Q. Do you steer by course in the river? A. If he gives it to you.

Q. Did you ever have a Captain give you a course? A. Not on the rivers.

Q. Now, did you ever take the ship through the St. Clair River? A. I don't remember the rivers. All I know is Huron, around Detroit.

Q. Now, there is a Lake Huron, and a City of Huron. A. It is right near the City of Huron there. I forget the names of the cities there. It is a beautiful spot. It is pretty wide. What the heck is the name of the city? One of the watchmen lives there. Oh, I forget the name of the city there. There are a few of them there. I don't remember the name of the city. There are two there. I know one of the wheelsmen live in Huron. The 3rd Mate lived there, too.

Q. Well, now, did you ever stand a lookout watch in the wheelhouse in the daytime? A. Not in the daytime.

Q. Why would Zyp call you up on the pilot house in the daytime, when the wheelsman was at the wheel, and you were on watch as a watchman?

Mr. Belkin: Objection. The question why Zyp would call him up is certainly not within the knowledge of this witness.

Q. (By Mr. Hinslea): Well, did he call you up? A. Zyp would call me up and ask me if I wanted to steer awhile.

I would say, "Yes"; and I would steer.

Q. Did Zyp handle this boat when they were in the rivers? A. Yes.

Q. What did the Captain do? A. Well, the Captain would handle it a lot of times; and Zyp would handle it on certain rivers. The Captain would be up there with him. The Captain would be there a lot of times with him, or the Captain would direct it, himself.

Q. When you had this conversation were you in the rivers? A. Yes.

Q. And did you relieve the wheelsman? A. I did.

Q. And where did the wheelsman go? A. He went back to get some coffee.

Q. So he wasn't there when you had the conversation with Zyp? A. He was there at the beginning.

Q. Well, how long did he stay? A. He stood around about 15 minutes. He said, "I am going back and get a cup of coffee." He came back up, and I went on with my duties.

Q. Now, was the Captain there? A. The Captain wasn't there then.

Q. You say it was a river, but you don't know which river? A. It was a narrow—it wasn't too—it wasn't a narrow place, but it was a place—

Q. Was it Lake St. Clair? A. Maybe it was Lake St. Clair. I don't know.

Q. It might have been the Straits of Mackinac? A. It might, but I don't know. It was a narrower place—it wasn't out in the open.

Mr. Hinslea: That is all.

Trial Examiner Leff: Any further questions?

Mr. Belkin: No.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: We will have a five minute recess.

(Recess had.)

Trial Examiner Leff: The hearing is in order. Call your next witness, please.

Robert Louis Vogt, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Belkin): What is your full name and address? A. Robert Louis Vogt, V-o-g-t, 423½ Cascade Street, Erie, Pennsylvania.

Q. You have worked for the Pittsburgh Steamship Company? A. I have; yes, sir.

Q. On more than one vessel? A. Well, two in the last two years.

Q. What were the vessels? A. Robert W. E. Bunsen, 1944; and the steamer Cornell in '45.

Q. What was the term of your employment aboard the Bunsen? Can you tell us when you went on, and when you came off? A. I shipped on the Bunsen the 18th of October, and came off the 20th of December.

Q. When did you ship—

Trial Examiner Leff: October 18, 1944.

Q. (By Mr. Belkin): In 1944 you shipped aboard—what was the other ship? A. The Cornell.

Q. When did you go aboard the Cornell? A. The 24th day of March.

Q. How long did you stay with the Cornell? A. Until the 23rd day of June.

Q. Directing your attention to the time when you were employed aboard the Bunsen, do you recall who the licensed personnel were? A. Captain Lawless; the first mate was—his last name was Regan. I don't recall the second mate's name. But the third mate was Bob something. I don't—when we fellows are talking to officers we usually call them by their rank.

Q. Do you recall who the chief engineer was? A. The chief engineer was—his last name was Smith.

Q. Do you recall any of the assistants? A. I gave the name of the chief. His name was Smith.

Q. Did I ask you if you recall any of his assistants? A. The assistants—there was only one, and that was the third assistant. His first name was Ralph. That was the only thing I knew him by.

Q. Were you a member of the NMU while aboard the Bunsen? A. I was.

Q. While you were aboard the Bunsen did you at any time discuss Union matters with any of the licensed personnel? A. I did; yes, sir.

Q. Will you tell us with whom you had such conversations, or discussions? A. Well, I was on lookout on—I was on the second mate's watch, from 10 to 2. The captain usually came up in the pilot house once in a while when we were out on the lake. That was in the evening.

Q. Was that in October or November? A. Well, it was some time after I shipped, within—from—within two or three weeks.

Q. That would be about the last of October, since you stated— A. No; it wasn't the last of October—well, yes; the last of October.

Q. Where was this conversation held? A. In the pilot house.

Q. Was anybody else present? A. Why, the wheelsman and second mate.

Q. What was your job aboard this ship? A. Watchman.

Q. Will you tell us what if anything the mate said to you, and what if anything you said to him? A. This was the captain.

Q. Oh, pardon me. The captain. A. Well, when I came aboard, he knew I belonged to the Union. When I shipped, I was at the gate, and he was going uptown. He paid the cab driver the fare from Painesville down to—

Q. Just a minute, Mr. Vogt. I haven't asked you that. I am asking you what the captain said to you, if anything. A. Well, he wanted to know if I belonged to the Union. I said, "Yes, I do." He says, "Were you on any of these boats during the election?" I said, "No, I wasn't." "Well," he said, "I don't think much of the NMU, or the CIO." I said, "What do you mean by that?" "Well," he says, "they are a bunch of Communists and Jews."

Q. What if anything did you say? A. I asked him if that was for the membership of the NMU, or the CIO, or just the officials. He said, "As a whole."

Q. Did you have any other conversations with him aboard the Bunsen? A. No, I didn't, not—I think I did one other time.

Q. When and where did that conversation take place? A. Up in the pilot house one evening after 10 o'clock.

Mr. Ray: I object, unless he did have a conversation. I don't think he should be permitted to answer unless—upon the statement now that he had a conversation—

Trial Examiner Leff: Well, did you have a conversation?

The Witness: I did have one; yes.

Trial Examiner Leff: All right. Go ahead.

Q. (By Mr. Belkin): I asked you when and where that conversation was held. At this moment I believe you told me it was in the pilot house. I was asking you if you could tell us just how long after the previous conversation this one occurred. A. Oh, I'd say two or three nights.

Q. Was anyone else present at this second conversation? A. The second mate and the wheelsman.

Q. What if anything did the captain say to you at that time and place, and what if anything did you say to him? A. Well, he said, "The NMU is controlled by Communists and Jews." And he said, "If these lake boats are organized they will have a bunch of niggers down here, and you will have to work with them." I said, "I don't believe that is so. Long before the NMU came in down here on the lakes, or on the coast, for that matter, they have had colored crews in the kitchen, or in the mess room." He didn't say any more.

Q. Did you discuss the Union with any other officers aboard that ship? A. I did with the third assistant and the third mate.

Q. When did you hold this conversation? A. Well this was about a week, or probably 10 days after I shipped.

Mr. Ray: Were those together, or separately?

Mr. Belkin: I am going to find that out.

Trial Examiner Leff: I didn't get it before. Who is the third assistant?

Mr. Belkin: As I recall he was called—

Trial Examiner Leff: I don't mean his name. What is the third assistant?

Mr. Hinslea: Engineer.

Mr. Belkin: I believe the rating is captain, first, second and third mate.

Trial Examiner Leff: Is it conceded that a third assistant engineer is a supervisory employee?

Mr. Hinslea: Yes; if the Board will concede that.

Trial Examiner Leff: Well, what is the position of the Board?

Mr. Hinslea: Does the Board concede the third assistant is a supervisor?

Mr. Belkin: Yes; the Board does.

Trial Examiner Leff: Well, everybody concedes he is a supervisor. Is he a member of the licensed personnel?

Mr. Rosenfeld: Yes; he is.

Q. (By Mr. Belkin): Who was present if anyone at that time? A. There was the second mate, the wheelsman, the third mate, and the third assistant.

Q. And yourself? A. And myself.

Q. Can you tell us what if anything was said by the people present, including yourself? A. Well, the third assistant, and third mate bunked together forward. We relieved the third mate, that is, the second mate relieved the third mate; but we probably came up at one time. After we would be in the pilot house, probably five or ten minutes, the third assistant would come up and get into a friendly argument, I'd say, with the third mate.

Q. Will you tell us what was said, if anything? A. Well, it was the time of the election. Both of them differed in their politics. That would be the way that things would start out. Then eventually it would come on to the Union.

Trial Examiner Leff: When you are talking about an election, you are talking about the political election, the presidential election of 1944?

The Witness: Yes, sir.

Q. (By Mr. Belkin): Well, after politics were discussed, what if anything was said involving the Union? A. Well, they would switch over to the Union then, the third mate would. He was definitely against the CIO, or NMU.

Q. Well, tell us what if anything was said, Mr. Vogt. A. Well, the third mate told me that all the organizers and the officials of the NMU was agitators and Communists; and he wouldn't have nothing to do with them.

Q. Did you reply? A. So I wanted him to say who—give names of who was Communists or who was agitators. He said, "The whole bunch of them."

Q. I take it from what you have testified that there were a series of such conversations with much the same thing said? A. There was; yes, sir.

Q. Occurring at the same place? A. Yes, sir. Sometimes it would be in the mess room.

Q. And with the same people, or different people present? A. Well, usually there would be the third mate and the third assistant. How I would happen to be back

there, I would go back for coffee. They would be sitting at the table there discussing things. Sometimes there would be a couple of firemen, and maybe a deckhand, watchman or wheelsman back there with them.

Q. They would hear these conversations? A. Yes, sir.

Q. In the same room? A. Yes, sir.

Q. Now, directing your attention to the second ship on which you sailed, owned and operated by the Pittsburgh Steamship Company, I think you said it was the Cornell; did you not? A. Yes.

Q. Now, when you went aboard that ship, who were the licensed personnel? A. Captain Donald Lawless was the captain of the boat.

Q. Is this the same one who was captain of the Bunsen? A. Yes, sir; the same one.

Q. You sort of followed him over; is that it? Well, tell us who the rest of the people were. A. We had a first mate there, but he was only there for two or three trips. I don't recall his name. Then they got another first mate there by the name of Louis Burns, the second mate was Dick Weh, and the third mate, his name was Pitt, or Pitts.

Q. Now, when you came aboard this ship, did you at any time hear the captain discuss matters involving the Union? A. He discussed them with me.

Q. When did this occur? A. Well, he discussed them first with the whole crew. He called a meeting. I shipped the 24th day of March. On the 31st day of March, at noon, he called a meeting for the whole crew, outside of the steward's department.

Q. Where was this meeting held? A. Conneaut, Ohio.

Q. Where did the crew assemble? A. It was held in the fantail.

Q. What people spoke at this meeting? A. The captain and the chief engineer.

Q. What if anything did the captain say? A. Well, he started in on talking about the safety of the ship; that the majority of the crew had never been on a boat before. He wanted to outline their duties to them; what they should do, and things. Then he brought the question of food up. After he got finished with that, he hesitated for a minute. Then he said, "There is one other thing I would like to speak about." He said, "I want you fellows to under-

stand," he said, "that you don't have to belong to any union, and, especially, the CIO, or NMU, to hold your job on this boat." Well, that was about all he said—oh, no, it wasn't either. He looked around for awhile, and he said, "I don't have any prejudice, or hold anything against any Union man, because I was a Union man once myself." But, he said, "I do—or I don't like—or wouldn't have anything to do with the NMU or CIO."

Q. Did that conclude his remarks at that meeting? A. That concluded his remarks.

Q. Did anyone else speak? A. The chief engineer did.

Q. What did the chief engineer say? A. Well, about the only thing he said was a few things on safety; and that he thought the same way as the captain did about the CIO and the NMU. That was—they were just a bunch of agitators and Communists, and Jews.

Q. While you were aboard the Cornell, did you become active on behalf of the NMU? A. I did; yes, sir.

Q. Just what were your activities? A. Well, I was trying to organize the unorganized seamen on the boat.

Q. Did you sign them up for the Union; is that it? A. Well, first thing I did was—I had a petition, and I went around to each individual asking him to read it and sign it if he wished.

Q. Did you have any difficulty in getting your petition filled out? A. I certainly did.

Q. What were your difficulties, if any? A. Well, it seemed that everyone I talked to brought the question up of Negroes. They said they wouldn't join any outfit that was going to have niggers in with the white people.

Q. This was from the unlicensed personnel who you were trying to organize? A. Yes, sir.

Q. Did you at any time discuss your petition with the captain? A. Relating to this question?

Q. Yes, or any other question. A. Well, I did with the captain, not as far as signing the crew up, but, oh, I guess it was probably a month afterwards, after we sailed out of Conneaut.

Q. Where did you talk to the captain? A. In the pilot house.

Q. Was anyone else present? A. Yes; the watchman was present. At that time I was wheeling.

Q. What was his name? A. The watchman?

Q. Yes. A. Doc Hiers.

Q. What if anything did the captain say to you at that time and place? A. Well, he started talking about the Jews running the country. I said, "Everybody has the same chance that the Jew has, or anyone else, if they would only take advantage of it." So then I told him—I said, "Well, Captain, I have been talking to a few of the men on the boat. They have the same ideas that you do. I have been wondering whether you said anything to them or not." He said, "I haven't said a word to the men." I said, "It sounds just as though you were talking—or that you were talking instead of the men, themselves, because," I said, "everything that they say is just like you say it. They won't have nothing to do with Jews or the NMU, or Negroes, or anyone else."

Q. Was anything else said by either one of you at that time? A. No; there wasn't, not at the time.

Q. To your knowledge did the captain at any time talk to the men about signing a petition authorizing you to represent them? A. Not that I know of; no.

Q. Did any member of the crew at any time ask you to take his name off the petition because the captain told you to? A. I would like to take that back, that answer to your question that you asked me.

Q. What is your answer now? A. My answer is: Yes.

Q. Well, tell us why you changed your answer. Tell us what happened. A. I just happened to think of an incident that happened in my room one morning after I came off watch. I had this Hiers read the petition. He said it looked pretty good to him. He signed it.

Trial Examiner Leff: What was the petition for?

The Witness: For the bargaining rights of the unlicensed personnel.

Q. (By Mr. Belkin): Similar to an authorization card; is that correct? A. Yes, sir.

Q. Who is Hiers? A. Well, he was the watchman at the time.

Q. What did Hiers say to you? A. He said, "I just got a letter from the Union stating that I signed up in the Union." I said, "That isn't right. You didn't sign up. You just gave your bargaining rights to the Union for

yourself." "Well," he said, "the captain told me that I couldn't hold"—now he was wheeling on there then. This was a fellow that I had broke in. He said, "I can't"—the captain told me, "I couldn't hold my job wheeling and belong to the NMU."

Q. Was anyone else present? A. No; there wasn't. It was in my quarters.

Q. What if anything did you say to him? A. I asked him if he was willing to go up to the captain with me right then and have the captain verify what he said. He said, no, that he was afraid.

Q. Did you talk with the captain at any time thereafter, and discuss Union matters? A. The captain and the rest of the crew sort of give me the silent treatment from then on.

Q. What do you mean by that? A. Well, they wouldn't associate with me, only when they really had to. The captain never brought up any more discussions. In fact, he never hardly spoke to me after that.

Q. Did you ever discuss the Union with any other members of the licensed personnel, besides the captain? By that I mean with any of the mates or engineers. A. With the third assistant, and third mate; yes.

Q. Who were the third assistant and third mates? A. Well, I only know them by their first name. The third assistant's name was Ralph. The assistant's name was Ralph, and the third mate's name was Bob.

Q. What did you talk to them about, the Union? A. We talked about that as we were—I would come up at a quarter after 10 in the evening, in the pilot house.

Q. Would anybody else be present in addition to yourself and these two men whom you have just named? A. Well, now, I am getting these two—I think we better cross that all off. I am getting my boats mixed up.

Q. Well, let's direct our attention to the Cornell. A. That is—well, this statement I made now only refers back to the Bunsen.

Trial Examiner Leff: What statement is that?

Mr. Belkin: To the third assistant and third mate.

Q. (By Mr. Belkin): Now, directing your attention, Mr. Vogt, to the Cornell. You just testified you were given what you call the silent treatment. I am asking you now if

after that you had any conversation on any occasion with any of the licensed personnel aboard that ship, the Cornell, on any matter touching the Union? A. With the first mate.

Q. And who was the first mate aboard the Cornell? A. Louis Burns.

Q. When did you talk with him? A. On our watch from two to six in the morning, in the pilot house.

Q. Was anyone else present in the pilot house on that watch besides you and Burns? A. Well, the wheelsman would be there.

Q. Who is the wheelsman on that trip? A. Hiers.

Q. The same Hiers concerning whom you previously testified? A. Yes.

Q. Now, what if anything did the mate say to you, and what if anything did you say to him then and there? A. Well, he came out—we would start talking about—or, he would say something about the Union. The conversation would go on about the Union, such as if the Union did get in on the Pittsburgh boats that they would have nothing but niggers working with the white crews. You would be sleeping and eating with them. So, I said, "Well, we are eating with them now. But that would be a question up to the members of the Pittsburgh Steamship Company after they came into the Union, whether they were going to have Negroes or whites on the boats."

Q. Did you thereafter have any other conversation with Mr. Burns? A. Well, he told me frankly that the NMU is a bunch of Communists and agitators; and he was deathly against Negroes, even though there were Negroes in the galley crew on there.

Q. Was anyone else present at the time? A. The wheelsman was.

Q. When did this conversation take place? A. Well, at the—in the course of from two to six in the morning, up in the pilot house.

Q. You don't remember exactly when? A. Well, no; I wouldn't—oh, I'd say, maybe about a month and a half or so after we started sailing.

Mr. Belkin: Mr. Hinslea, you may cross examine.

CROSS EXAMINATION.

Q. (By Mr. Ray): How old are you? A. Thirty-three.

Q. How long did you sail? A. I sailed since about 1919. Not steady.

Q. How old were you when you started to sail? A. Oh, I guess I was about 17 or 18 years old.

Q. When did that sailing take place? A. On the Great Lakes.

Q. With what fleet? A. Well, the first boat I ever shipped on was the Norman B. Ream.

Q. How long did you remain on her? A. One trip.

Q. Now, will you just give us a general outline of your sailing experience from then up until 19— A. That is a long time ago. I don't recall what boats I was on up until the last two years or three years.

Q. You haven't any recollection of the boats you were on from your first trip on the Ream until the last few years? A. Unless I would go back to my discharges.

Q. Was there a substantial period during that time that you spent ashore? A. Well, there was possibly three or four years.

Q. What did you do then? A. Worked ashore in shops.

Q. Now, what was the first year that you were on—what was the year you were on the Ream? A. That I couldn't say. I'd say it was about 1919.

Q. Did you sail on any ships in 1920? A. I did—no; 1920 I wasn't out.

Q. Did you sail on any ships in— A. I shipped on a couple of boats out of Erie, but I never took them out.

Q. Did you sail on any in 1923? A. I did, but I can't recall what I was on.

Q. Did you sail on any in 1922? A. Yes; I did.

Q. Well, did this sailing that you did—was that the entire season, or was it just a month or two? A. Parts of seasons.

Q. What about '23? A. I was out in '23.

Q. But you can't remember the vessels? A. No; I can't, not offhand.

Q. Were you out in '24? A. I was out; yes, sir.

Q. You don't know how long, or what vessels? A. No; I don't.

Q. How about '25? A. I was out in '25.

Q. You don't know how long or on what vessels? A. I think I was in the—I was on some Hanna boat in '25.

Q. In what capacity? A. Watchman.

Q. When did you get your A.B. ticket? A. 1923, I think.

Q. Have you had it renewed since then? A. I got a renewal; yes.

Mr. Rosenfeld: Mr. Examiner, I don't want to curtail the cross examination, but what is the relevancy of all these geographical details?

Trial Examiner Leff: I am sure I don't know.

Mr. Belkin: Would it save the record if we gave you such a statement after this day's hearing is closed, Mr. Ray? We will be glad to prepare one from the discharge.

Trial Examiner Leff: Yes; even cross examination should have some purpose. I don't see that you are headed in any particular direction now. However, if you think you have a point, then go on and pursue it.

Mr. Ray: Well, we haven't any more desire to lengthen this than you have, Mr. Examiner. We do have a point.

Trial Examiner Leff: How would this man's past history be relevant? Does it go to his credibility somehow?

Mr. Ray: It goes to his actions on the vessel, and his ability to perform his work.

Trial Examiner Leff: Well, that is not in issue how he performed his work. He has testified that he had several conversations with supervisory personnel. That is the only thing we are interested in.

Mr. Belkin: Mr. Examiner, I wonder if Mr. Ray will accept my proffer? That is, I am offering to get a record of this man's previous sailing experience, if he wishes, on the basis of his discharge. I can get it for him by tomorrow.

I am sure I don't want to foreclose counsel from proceeding, if he has a motive.

Trial Examiner Leff: If he feels he has a point that is relevant, I will take his word for it. But I am frank to confess I just can't see it at all.

Proceed, Mr. Ray.

Q. (By Mr. Ray): Now, you have testified, Mr. Vogt, to a conversation you had with the captain, in which the captain asked you if you belonged to the Union.

Mr. Belkin: Let's identify the captain.

Mr. Ray: The captain of the Bunsen, Captain Lawless.

Q. (Continuing) And that this occurred two or three weeks after you came on board the vessel; is that correct? A. Not on the Bunsen, it didn't. This Bunsen only run about three weeks.

Q. It occurred two or three weeks after you started the run? A. Well, I'd say—well, that is all right. Three weeks afterwards. I can't recall just the date.

Q. Well, how do you fix that time? What makes— A. I don't fix any certain time.

Q. You said two or three weeks. To that extent you are fixing it. Now, what impressed it on your mind with respect to any particular time? A. Well, I knew I had been on the boat for some time. I wouldn't say that the exact date was two weeks after, or three weeks after. It was probably only 10 days.

Q. Where was the vessel when the conversation took place? A. Out in the lake.

Q. Which lake? A. That I can't recall either.

Q. You can't recall which lake? A. No. I knew we were out in the lake.

Q. Do you recall whether it was day or night? A. It was at night time.

Q. Now, what fixes that in your mind? A. Well, because the only time that I am in the pilot house is at night time, lookout.

Q. Why do you stand lookout in the pilot house instead of out on the forecastle head? A. When it is a clear night they do have you in the pilot house on some boats.

Q. Was it the practice in this vessel to have you in the pilot house instead of the forecastle head? A. It was.

Q. Now, how long was that conversation? A. It wouldn't last over, probably five, ten, fifteen minutes.

Q. Did you discuss anything except Union matters? A. Well, it wasn't—no; we talked about everything. We talked about the presidential election, and everything.

Q. All right. Now, tell me some of the conversations that took place with respect to these other matters. A. Well, I can remember one very distinctly. Captain Lawless is a republican. I happened to be a democrat. I stuck up for Roosevelt, and he stuck up for Dewey.

Q. Well, do you remember what the substance of your conversation was? A. Well, it was just like he thought that Dewey would be a better man in there than Roosevelt; and I thought Roosevelt would be a better man.

Q. I am asking you for the substance of the conversation. A. That was it.

Q. You told us with great particularity what was said on this Union matter. Now, tell us with equal particularity what was said on these other matters. A. Well, he didn't think that—or Captain Lawless didn't think that Roosevelt was a good man at any time; and he should never run for the fourth term.

Q. Tell me what he said. A. That is what he was saying.

Q. You told me that he said that all the—that the NMU are a bunch of Communists and Jews. You have given me his exact words. A. I didn't say those were his exact words.

Mr. Rosenfeld: Mr. Ray may have a right to cross examine, but he does not have a right to impute to the witness things he never said. The witness at no time, to my recollection, ever purported to quote the captain directly. He only gave the substance.

Mr. Ray: He said that the men were Communists and Jews, and that it applied to the whole membership.

Trial Examiner Leff: The record will show that. Will you proceed, Mr. Ray.

Mr. Ray: I want him to give his conversation.

Trial Examiner Leff: What is your question? Will you repeat your question.

Q. (By Mr. Ray): Tell me with as much exactness as you can what he said with reference to these matters that were unrelated to the Union. A. I said as much as I could remember of it.

Q. Did you only talk about national politics and the Union? A. Well, I guess it was a pretty deep subject at the time.

Q. Well, that doesn't answer my question. A. That was about the only that would start the conversation going.

Q. Did you talk about life? A. Oh, we talked about different things in general; about the boat and the safety of the boat, and so on.

Q. All right. What was the conversation on that subject? A. Well, the captain used to tell me I should show the young fellows as much as I knew about the ropes of the boat.

Q. What did you say to him? A. I told him—I said, "I have a regular school down there."

Q. That you had a regular school? A. That's right.

Q. Did you have a regular school teaching the boys what to do? A. Not teaching them what to do, but I used to teach them how to splice ropes and tie knots.

Q. Now, this conversation that took place where the third assistant engineer, and the second mate, and the wheelsman, and the third mate were present, where did that conversation take place? A. In the pilot house.

Q. Where was the vessel? A. Out in the lake.

Q. Which lake? A. Well, I could say Lake Erie, or Lake Huron, or Lake Superior.

Q. I don't want you to say just one of the lakes. A. I don't know which one it was on at the time. I never paid any attention to it. I probably should have marked it down.

Q. You mean at the same time that you marked down these conversations? A. No; I didn't mark down any conversations.

Q. Where had you come from? A. That I couldn't say either.

Q. How long after this first conversation did this second one take place? A. Oh, it was pretty nearly nightly, if we were out in the lake.

Q. You mean the conversations with these men that I mentioned, the third assistant, the second mate, the wheelsman, and the third mate? A. Yes, sir. There is a reason for that, too. On this Bunsen the third mate and third assistant slept forward in the same forecastle. So, as we used to come forward from the engine room at night, if the third mate wasn't back aft in the mess room, he would

come up in the pilot house. Sometimes he would get up there a little early.

Q. All these men were in the pilot house nightly; is that right? A. When they were out in the lake; yes, on a clear night.

Q. In other words, they were using the pilot house virtually as a club room; is that correct? A. No; I wouldn't say that.

Q. Was the third assistant and third mate both off watch? A. Yes; they were.

Q. And they would let their sleeping go to get in there? A. Yes; that's right. They had eight hours to sleep. A man can't sleep 16 hours a day.

Q. Now, this conversation in which the third mate said that the officials of the NMU were agitators and Communists, you asked him to give you the names? A. That's right.

Q. That conversation took place between a third mate, and a third assistant; is that right? A. Yes, sir.

Q. In other words, it was a conversation between two officers? A. No. When the third mate was telling me, after I would get into the friendly argument—

Q. It was a friendly argument; was it? A. Yes.

Q. In other words, you fellows were just discussing the whole question of unionism? A. Well, as far as I was concerned it was friendly.

Q. It was friendly as far as they were concerned; wasn't it? A. Well, sometimes I doubted that on the third mate's part.

Q. You didn't see any animosity or any physical violence of any kind; did you? A. No; but I could tell the way he acted towards me.

Q. You mean right then he acted that way towards you, or later when you got this silent treatment, or did that occur on the Cornell? A. That happened on the Cornell.

Q. You didn't get any silent treatment on the Bunsen? A. No; not exactly.

Q. What do you mean not exactly? Did you or didn't you? A. Well, at times I thought so.

Q. You are not sensitive; are you? A. Not much.

Q. So, will you agree, Mr. Vogt, that the conversation that took place nightly in the pilot house between these

two men were an interchange of ideas between these two officers, and you would occasionally join in; is that correct?

Mr. Belkin: Object.

Trial Examiner Leff: I will allow it.

Answer it, please.

A. Well, it would start out friendly; but sometimes it got pretty rough.

Q. (By Mr. Ray): This is what I want to get your statement on: The conversations took place principally between the two officers, the third mate and the third assistant, and only occasionally you would interject yourself into the picture? A. Well, I was right there. I couldn't help listening.

Q. Yes. But the conversation was between the two men, the two officers? A. The first of it; yes.

Q. Well, then something would come up that you wanted to say something, and you would say it? A. That's right.

Q. And they, of course, would probably address something to you, and go back talking among themselves and arguing the question back and forth; is that right? A. That's right.

Q. Now, what time did these conversations usually take place nightly? A. Well, I went on watch—supposed to be up there at quarter after 10. Sometimes it was five minutes after 10 and sometimes it would be 10 minutes after 10 when I would go up there.

Q. You didn't go in the pilot house every night, surely, to stand your watch in the pilot house? A. I didn't say I went every night. Every third night we was out in the lake I did.

Q. How often would these conversations take place in a week, for instance? A. Well, it takes you about 18 or 19 hours to cross Lake Huron; about 34 or 35 hours to cross Lake Superior. So, sometimes in Lake Superior you would have two nights. Sometimes you would only have one night. It all depends on how you hit the rivers.

Q. What I want to know, Mr. Vogt, is this: Now, you said these conversations took place nightly in the pilot house. A. I said sometimes they also took place in the mess room.

Q. I am talking about the pilot house now. Confine yourself to that, and tell me how many conversations over a month, for instance, would take place between the men we referred to. A. Well, I was only on there, not quite—I wasn't on there quite a month. The boat wasn't on the run quite a month. I was on much longer after she tied up. I'd say, probably six or seven times.

Q. Now, you say some of these conversations took place in the mess room. Did they take place at night also? A. Yes, sir.

Q. Well, then, you were on watch; weren't you, from 10 to two? A. That's right.

Q. And the third mate and the third assistant were off watch? A. They could go back in the mess room; that's right.

Q. What did you do, leave the pilot house and go back? A. I would get relieved by the deck watch for coffee.

Q. That wouldn't be right after you went on watch? A. I could take it any time the deck watch wasn't busy.

Q. Wouldn't you get your coffee before you went on watch? A. Sometimes I did, and sometimes I didn't.

Q. But you would wait until they got back there, and you would go back; is that right? A. No; it isn't.

Q. Well, how soon after you would go on watch would you go back to the mess room and listen to these conversations? A. I didn't go back there to listen to conversations. I went back there for coffee.

Q. Well, you stayed there after you got your coffee; didn't you? A. Until I drank my coffee; yes.

Q. Now, when did you leave the Bunsen? A. The 20th day of December.

Q. Was she laying up then? A. She was all laid up.

Q. And you went back on the Cornell, because of Captain Lawless being there? A. I went back because Captain Lawless asked me to.

Q. Now, why did you leave the Cornell? A. I just quit on my own accord. I was hungry, for one reason.

Q. You say you were hungry? A. The boat was hungry. The whole crew was hungry. Every time it hit port we would go up to the restaurant and get a steak, or something.

Q. Where? A. Wherever they could get a steak. In Chicago, Gary.

Q. How long were you on her while she was hungry? A. She was hungry right from fit-out.

Q. How long did you stay on her that you were hungry all the time? A. I didn't get that.

Q. How long did you stay on her and were hungry all the time? A. Well, I wasn't hungry all the time. I looked like a hen, though, when I got off, because all we had to eat was eggs.

Q. Well, then, you didn't get off because of any attitude of any of the officers on this Union question; is that true? A. That was one of the questions—or one of the reasons.

Mr. Belkin: Mr. Examiner, again, I say, I honestly in no way want to interrupt or interfere with the cross examination of the witness, but I think it is about time for me to point out to counsel that Mr. Vogt is not—we allege no discrimination against him.

Trial Examiner Leff: It is perfectly true. I don't see how this is relevant.

Mr. Ray: You made unfair—you made allegations of unfair practice.

Trial Examiner Leff: They do not claim that the witness quit because of any unfair practice. There is no allegation made in the complaint. The Board is not bound by that.

Mr. Ray: Isn't it part of the whole picture as reflecting the Company's attitude?

Mr. Belkin: As a matter of fact, I didn't know they were hungry.

Mr. Ray: I am not concerned about this hungry business, either.

Trial Examiner Leff: But you are making a big issue of it.

Mr. Ray: No; I am trying to find out if he left because he was hungry, or because of any anti-Union activity.

Trial Examiner Leff: The witness testified he left because he was hungry. Having so testified that would exclude any testimony that he left because of discrimination.

Mr. Ray: Upon that understanding, I will ask no further questions.

Mr. Belkin: We do not claim that the Company discriminated against Mr. Vogt because of the employment.

Mr. Ray: We are not interested in whether they discriminated in regard to his employment, unless it refers to his Union activity. I have told the Trial Examiner, with the understanding that excludes other testimony, I am satisfied.

Q. (By Mr. Ray): Now, at this meeting that the Captain called on the Cornell, and at which the Chief Engineer spoke, did any of the other officers speak? A. Just the Captain and the Chief Engineer.

Q. Isn't it a general practice to have safety meetings on vessels? A. This meeting was called by the Captain for everything in general.

Q. How do you know that? A. Because he said so.

Q. The primary purpose was for safety; wasn't it? A. That ain't what he said; no.

Q. Didn't he spend most of his time talking about safety and duties? A. Not most of it. He took up the point question; that it was hard to get points to get food.

Q. But they all related to the operation of the vessel? A. Well, everything was brought up. Safety rules were brought up, and the food question was brought up, and everything was brought up.

Q. Now, Mr. Vogt, how often did the Pilot come aboard? A. What pilot?

Q. You guess what I am talking about.

Trial Examiner Leff: Why should he guess? Are you referring to the NMU?

Mr. Hinslea: He knows it. There is no such thing as a pilot on a ship.

Q. (By Mr. Ray): How often did the official organ of the NMU, the Pilot come aboard? A. Whenever any crew members would go up and get it, or I would stop in the hall and pick up a few, and bring them down to the boat and pass them around.

Q. Now, in the Pilot, during the time you were aboard the vessel, were there any pictures that had Negroes in them?

Mr. Belkin: I object to that question. It is immaterial, irrelevant and incompetent.

Trial Examiner Leff: What is the purpose of that, Mr. Ray?

Mr. Hinslea: Plenty. I say this to you—

Trial Examiner Leff: Are we going to litigate the issue as to the validity of the CIO campaign propaganda or literature? Is that what you are trying to do?

Mr. Ray: Not the validity of it. The purpose is to show that these men, the crew members, had the knowledge that they might have to associate with Negroes brought through this publication. That goes to the question as to whether the Captain had been instructing these men, as this witness testified.

Trial Examiner Leff: I will permit the witness to answer.

A. I have already said, yes; there were pictures of Negroes in the Pilot.

Q. (By Mr. Ray): Now, Mr. Vogt, you testified as to a conversation with Mr. Burns in which Mr. Hiers was present. You said the question of the Union was brought up, and the first mate was alleged to have said that if you got the Union, you would get nothing but Niggers; and you would have to eat with them. And you said you were eating with them now; is that right? A. I said they are doing our cooking.

Q. You didn't say that on direct examination. A. I said they had a Negro crew in the galley.

Q. That is your testimony now? A. It was before.

Q. You said, according to my notes—

Trial Examiner Leff: Don't argue with the witness. The record will indicate what he said before.

Q. (By Mr. Ray): Well, what is the fact as to whether you ate with them or not? A. Well, there is no doubt about it. There were four of them on there.

Q. But you didn't eat with them; did you? Did they sit down at the table and eat with you? A. At different times; yes.

Q. Isn't it a fact that for years and years and years the Pittsburgh Steamship fleet had had Negroes in their galley crew? A. Yes.

Q. On a great many of their ships? A. Well, I have been on their ships. They had colored crews in the galley long before the Union came in.

Q. And they still have them; don't they? A. They do; yes.

Q. Now, describe this silent treatment a little more particularly, will you? A. Well, in order to get at the silent treatment, I have to talk about where these—where the majority of these fellows came from.

Q. All right. Go ahead and do it. A. There was six fellows, or six guys up forward that came with the Captain from Florida. This little town they come from is definitely against Negroes. By the Mate talking to me and telling me that the CIO is run by Communists and Jews and Negroes, I said, "Yes," I said, "Our Secretary-Treasurer—not Secretary—our Secretary is a Negro." So, by him talking like that, and the fellows being from where they are, they thought that I was talking to them about the NMU. They thought I was only talking for the Negroes. That we were going to load these Pittsburgh boats up with Negroes if the Union won a contract on there.

Q. Well, what happened? What about the silent treatment? A. So, in due time, these fellows instead of coming into my room like they used to before the Mate and Captain spoke the way they did, they would stay out of my room. Only one time this Hiers—it was a general practice at night that I would take the wheel for maybe an hour, or an hour and a half, if it was a clear night. Just split the watch. It makes it much easier. He just turned his back on me. Wouldn't want me to take the wheel.

Q. The Chief on the Bunsen also? A. Yes, sir.

Q. Were all these men unlicensed men? A. They were; yes.

Mr. Ray: That is all.

Mr. Belkin: I have no further questions.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

JACK LAWRENSON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Q. (By Mr. Belkin): What is your full name and address? A. My name is Jack Lawrenson, L-a-w-r-e-n-s-o-n. My address is 17 Charles Street, New York City.

Q. I understand you are a representative of the National Maritime Union; is that true? A. I am a Vice President of the Union.

Q. How long have you been a member of the NMU? A. Since its foundation, 19—

Q. How long have you been an officer in the NMU? A. Since 1938.

Q. Are you familiar with the policies and program of the NMU? A. Quite familiar with the policies and program.

Q. I hand you what has been marked Board's Exhibit No. 2, and ask you if you have ever seen that before? A. Yes; I have.

Q. Have you read it? A. Yes.

Q. Could you tell us what it is, briefly? A. It is a letter from the Pittsburgh Steamship Company signed by A. H. Ferbert, President, reporting to give clarification of the Union's policy to the unlicensed employees of the Company.

Mr. Hinslea: I suggest, rather than the witness interpreting the letter, that the letter speaks for itself, and that is a legal conclusion.

Trial Examiner Leff: I think you are correct.

Mr. Hinslea: I object to the last part of the sentence, and ask that it be stricken.

Trial Examiner Leff: Read the last part.

(Last answer read by reporter.)

Trial Examiner Leff: Oh, well, strike everything. The question and answer as to what the letter is, is to be stricken. Proceed.

Q. (By Mr. Belkin): Now, can you tell us what you know about this statement in this letter, which I shall now read to you:

"As you know, during this emergency, the question of wage rates is in the hands of the Government." Is that statement true?

Mr. Hinslea: Well, now—

Mr. Belkin: To your knowledge?

Mr. Hinslea: If the Examiner please, is this man to be an expert, and competent to testify to questions of that type?

Trial Examiner Leff: Not until he is first qualified.

Mr. Belkin: I think we qualified him.

Mr. Hinslea: Just because he is a vice president of the Union doesn't qualify him to talk about what the Government does.

The Witness: May I say something?

Trial Examiner Leff: Your attorney will question you.

Q. (By Mr. Rosenfeld): Mr. Lawrenson, what are your duties—

Trial Examiner Leff: Just a moment. You have a right to examine witnesses, but you have to wait your turn. Right now the Board is conducting the examination.

Mr. Belkin: I am willing to waive my right and permit Mr. Rosenfeld to examine this witness.

Trial Examiner Leff: All right.

Q. (By Mr. Rosenfeld): What are your duties in the National Maritime Union? A. Negotiation of contracts, and the handling of cases before the National War Labor Board.

Q. Have you been involved in wage disputes with the various employers on the great lakes? A. Many.

Q. And have you appeared before the National War Labor Board and its agencies in connection with wage disputes? A. On many occasions.

Q. As the result of the collective bargaining participated in by the National Maritime Union, through you, have any wage increases been granted to the unlicensed personnel on the great lakes?

Mr. Ray: We object to that.

Mr. Hinslea: Now, that is—

Trial Examiner Leff: On what ground?

Mr. Hinslea: That isn't qualifying him as to whether or not the Union got some wage rates.

Trial Examiner Leff: Well, just go into the qualifications, as an expert.

Overruled.

Q. (By Mr. Rosenfeld): Have they, Mr. Lawrenson? A. They have.

Q. Now, in 1943, as a result of the War Labor Board's directive, was there a modification of wage rates on the Great Lakes? A. There was an increase ordered by the Board.

Q. Were you involved in the War Labor dispute case as a result of which that increase was awarded? A. I was involved in the case.

Q. Had the Union made any demand upon the employers prior to the action by the War Labor Board? A. Definitely.

Q. With respect now to wage rates? A. Wage increases.

Q. Increases? A. Yes.

Q. Did the employers agree to those wage increases? A. No.

Q. And was it necessary for you to appear before the War Labor Board before those increases were granted? A. The cases were argued before the Board, and a decision reached by the Board.

Mr. Hinslea: Now, Mr. Examiner, I don't want to shut Mr. Rosenfeld off, but is there any dispute that the War Labor Board, or the Wage Stabilization Section doesn't have the final say on wage increases in industry, especially the maritime industry?

Trial Examiner Leff: They don't have the final say?

Mr. Hinslea: Yes.

Trial Examiner Leff: I understood in dispute cases the War Labor Board has the final say.

Mr. Hinslea: Yes; but that statement in the letter says that the Government controls—

Mr. Rosenfeld: For Mr. Hinslea's comfort let me make this statement.

Mr. Hinslea: Don't add to my comfort.

Trial Examiner Leff: Please make your remarks up here.

Mr. Rosenfeld: The Economic Stabilization Act of 1942, as amended, and the regulations of the National War Labor Board, of which the Board may take judicial notice, because they appear in the Federal Register, clearly indicate that the only time an employee, and the only way in which an employee can ask for a wage increase, and attain the benefits of the power of the War Labor Board is when a Union represents him for the purpose of collective bargaining. The only other way a wage increase can be attained is by the voluntary act of the employer.

Mr. Hinslea: We are not disputing that.

Mr. Rosenfeld: Just a moment, please.

The statement made is incorrect, since it completely eliminates the function of the Union. If you will permit me, I will show what the function of the Union is, and in what way that is a distortion of the facts.

Trial Examiner Leff: Well, proceed. I don't know what you are coming to.

Mr. Belkin: I think at this time I would like to have my question again put to Mr.—

Trial Examiner Leff: You waived your rights.

Mr. Hinslea: You waived—

Trial Examiner Leff: Aren't you satisfied to have counsel for the NMU proceed?

Mr. Belkin: Under the circumstances, I am.

Q. (By Mr. Rosenfeld): Now, Mr. Lawrenson, I direct your attention to the Board's Exhibit No. 2. Will you please take it. I direct your attention to that part of it dwelling on the question of wages. Will you read that please? A. I am reading from the sixth line, I believe. "We further know that neither the Union nor the Company has today control over what wages shall be paid. As you know, during this emergency, the question of wage rates is in the hands of the Government."

Q. (By Mr. Rosenfeld): Now, Mr. Lawrenson, I asked you, based on your experience with the War Labor Board, and the National Maritime, whether that statement is true or false?

Mr. Ray: We object to that, unless the Board has charged the Pittsburgh Steamship Company with unfair labor practice, with that particular document as part of the unfair labor picture.

Trial Examiner Leff: Well, as I analyze the situation at the present moment, the Board is contending that this exhibit, Exhibit No. 2, forms a part of the pattern of unfair labor practices. I assume that your position, that is, the position of the Respondent with respect to Exhibit 2 is that it is at best, or most, an expression of opinion on the part of the Respondent, which is protected by the first amendment; is that correct?

Mr. Belkin: You have expressed the Board's opinion.

Now, I also take it that the Board, and the CIO contend that the immunity afforded by the first amendments would not cover this statement, if the statement were false.

Mr. Rosenfeld: Or misleading.

Mr. Belkin: In connection with all the other acts we allege the Company is guilty of.

Trial Examiner Leff: Yes. Well, with that—

Mr. Hinslea: Well, Mr. Examiner, isn't that a legal conclusion? The letter has been introduced. Isn't it for you to decide rather than have some layman, as an expert, tell you whether or not it is incorrect? I think that is for you to decide, not Mr. Lawrenson.

Trial Examiner Leff: It is for me to decide. If I can get any assistance from the witness, I will be pleased to have it. I am not passing at this time on the weight to be given to this testimony. I am not even saying that any weight should be given to it. But I think it should be made part of the record.

Q. (By Mr. Rosenfeld): Now, Mr. Lawrenson, directing your attention to that portion of the letter, I ask you whether that is an accurate statement with respect to the manner in which wage rates are regulated and established in war industries during wartime? A. It is an inaccurate and misleading statement.

Mr. Hinslea: Wait a minute, please.

Trial Examiner Leff: That is a conclusion. We know what the statement says. Let's find out what the facts are as you contend them to be and I will draw the conclusion, or the Board will, as to what is true and what is false.

Q. (By Mr. Rosenfeld): Mr. Lawrenson, what have you, as representative of the National Maritime Union, done with respect to the change in wage rates in the Maritime industry? A. The process is simple. The Union first negotiates directly with the Company.

Mr. Hinslea: May I ask this be qualified? After they become a certified bargaining agent?

Trial Examiner Leff: I imagine that is true. Let's get the witness to concede that.

Isn't that true, you don't negotiate until you are the recognized collective bargaining agent?

The Witness: In most cases that is quite true. There are some cases where the Union has been recognized without an election.

Q. (By Mr. Rosenfeld): Now, Mr. Lawrenson, after you have been recognized in one way or another as a col-

lective bargaining agent for the unlicensed personnel working for a steamship company, what procedure do you follow with respect to establishing wage rates and working conditions? A. The steps are as follows: In consultation with the crews of the Company involved, or the Companies, a contract is drafted. Then there is a period of direct negotiation between the Company and the Union. If these negotiations fail to reach an agreement, under wartime conditions, the case is then taken to the Conciliation Service of the United States Department of Labor, who in turn, certifies it to the National War Labor Board, before which Board a hearing is held, and the Union's demands are discussed; arguments are presented pro and con, and the Board reaches a decision.

Q. Now, among the demands which you will submit to the companies in direct collective bargaining, what are these demands in addition to wages? A. The demands will range from the general rules which involve all general questions of ownership for the set-up of proper grievance machinery, shipping committees, living and working conditions, wage schedules, and overtime schedules.

Mr. Hinslea: What has that to do with the particular clause of the letter?

Trial Examiner Leff: I don't know.

Mr. Rosenfeld: There is a good deal to be said about this particular clause. Among other things it suggests that the only thing a Union can do, and even from that it is barred, is on wage rates. I am showing you that there are many other things which a Union can do besides establish wage rates. That the suggestion made in the letter—

Trial Examiner Leff: Won't you assume that the Board knows that?

Mr. Rosenfeld: I just want to make a complete record. If the Board will take judicial—

Trial Examiner Leff: The Board is an expert in the field of labor relations. The Board will take judicial notice that the Union negotiates for other things besides wage rates.

All right. Go ahead.

Q. (By Mr. Rosenfeld): Now, with respect to the establishment of wage rates, Mr. Lawrenson, what are the considerations which the Union submits to the Company

about the changes in wage rates? A. That will vary in the area. The deep water rates vary, for example, with the Great Lakes.

Q. No. I am concerned now with the Great Lakes.

Mr. Hinslea: I object to that. What relevancy has that to the sentence in that letter? I don't care what foundation, or what the—

Trial Examiner Leff: What is the sentence? I have forgotten it.

The Witness: This one here (indicating).

Mr. Rosenfeld: "As you know, during this emergency the question of wage rates is in the hands of the Government."

Trial Examiner Leff: Yes, go ahead.

(Question read.)

Mr. Hinslea: I object. It is certainly irrelevant as far as the questions there—

The Witness: The Union bases the wage demands upon the needs of the seamen in the Great Lakes in terms of support for their families, and required money they must have for that.

Q. (By Mr. Rosenfeld): Now, I show you Board's Exhibit No. 3, Mr. Lawrenson. Will you direct your attention to that?

Trial Examiner Leff: Are you finished with Board's Exhibit?

Mr. Rosenfeld: Yes.

Trial Examiner Leff: Well, I would like to ask him: Now, what is there incorrect about this full sentence:

> "As you know, during this emergency the question of wage rates is in the hands of the Government in that they have been frozen by the Government, and their regulations must be in accordance with the essential Governmental stabilization policies."

Consider the sentence as a whole. Not only the first part. Tell me what is inaccurate about that.

The Witness: May I answer that?

Trial Examiner Leff: Yes.

The Witness: The Union wants to make it clear—and the date of the letter is very important, May 2, 1944. In 1943, in Case No. 376, involving four members of the Lake

Carriers' Association, the Union secured a decision from the Board, which awarded to the unlicensed employees $22 a month base pay increase, and $5 per month in lieu of working rules while working rules were still being argued. Following that decision on the unorganized company, including the Pittsburgh Steamship Company made a voluntary application to the War Labor Board to put a similar increase into effect. This was done.

In the meantime the Union was arranging its working rules before the National War Labor Board, which involved overtime payments, and an overtime rate of 95 cents an hour both for certain work done within eight hours, and for all work done in excess of eight hours.

Mr. Hinslea: May I just interrupt here. What he is testifying to has nothing to do with the Pittsburgh Steamship Company, or the party involved.

The Witness: I made that clear. The Pittsburgh Steamship Company made a voluntary application, based on that decision.

Mr. Hinslea: I object to that as to its relevancy.

Trial Examiner Leff: Let him finish his answer.

The Witness: This letter was sent out on May 2, dated May 2, to all the crew members, which says:

"As you know, during this emergency the question of wages rates is in the hands of the Government."

The preceding sentence says:

"We further know that neither the Union nor the Company has today control over what wages shall be paid."

The Union's position in lining this up with the general discrimination practices of the Company asserts that this was serving to make clear to the unlisted personnel that even if the Union became the collective bargaining representative, no further increases could be secured.

Trial Examiner Leff: Well, look—

Mr. Hinslea: Without the permission of the Government?

Trial Examiner Leff: I am questioning the witness now.

The latter part of the sentence limits what was said before. It says:

"—in that they have been"—referring to wage rates—"frozen by the Government"; isn't that true?

The Witness: The proof that it was not true—the proof that it is a misleading statement is in the file, that on June 9, in the same case, No. 376, the Board handed down its final decision which awarded to the seamen involved in this case, overtime in excess of eight hours and the 95 cents an hour; overtime for many other matters. Later, the Pittsburgh Steamship Company, in June—this was sent out in May—applied to the Board for permission to put those into effect.

Trial Examiner Leff: Read the balance of the sentence:

"—and their regulation must be in accordance with essential Government stabilization policies."

Well, those adjustments that you refer to were secured in accordance with the essential Governmental stabilization policies; were they not?

The Witness: Indeed. Although, the Companies argued during the hearing that the decision of the Board was a violation of those stabilization policies, I might say. The fact is that from the Union's point of view, the statement is. But a letter by the steamship company was misleading the men to believe aboard the vessels that the Union was powerless to secure them further increases.

The record shows that in June they did secure further increases.

Mr. Hinslea: He is trying to argue to you what the intentions of the Pittsburgh Steamship Company were. That is all argument. That is for his counsel to present to you in argument or brief.

Trial Examiner Leff: All right, let's proceed.

Have you any further questions?

Mr. Rosenfeld: Yes. Just one question.

Q. (By Mr. Rosenfeld): Mr. Lawrenson, who took the initiative in obtaining the wage and working conditions and overtime adjustment of which you speak? A. The National Maritime Union, CIO.

Q. Now, I address your attention to Board's Exhibit 3. The third paragraph of that letter, Mr. Lawrenson—

A. Yes.

Q. Will you read it, please? A. "You should carefully consider some of the issues which have been referred to by the Union * * * One is 'rotary hiring.' To make sure that you understand what this means * * * it means that you are entitled to return to the same ship in the spring that you laid up the previous fall, but if you are following an engineer or mate, and want to work with him and he is promoted, he cannot hire you. This is called 'fleet seniority.' Again, if you ship out as deck watch, you cannot be promoted to a watchman or lookout when there is a vacancy. The vacancy must be filled by the man at the top of the list at the Union hall. If you do not go back to the same ship in the spring, you register at the Union hall and work your way up to the top of the list, and take the first opening for the position you are seeking, whether it be in our fleet or some other fleet. If you refuse the position, then you go to the bottom of the list."

Q. (By Mr. Rosenfeld): Now, Mr. Lawrenson, are you familiar with the practice known as rotary hiring, as fought for by the National Maritime Union? A. Thoroughly familiar.

Q. Both from the Great Lakes and off shore? A. Both the Great Lakes and off shore.

Q. How long has that been a policy of the Union? A. Since the Union's foundation in 1937.

Q. What was the relation between that policy and the organization of the Union? A. It is essential and important, and probably the most important part of the Union's policies and programs.

Q. Will you explain that statement, please?

Trial Examiner Leff: The statement as to what rotary hiring is?

Mr. Rosenfeld: I will withdraw that.

Q. (By Mr. Rosenfeld): Will you please describe how rotary hiring functions in connection with the Maritime Union? A. Men come into the Union Hall, and they register on a list. In most Union halls the jobs are called on the hour. The oldest men on the list throw in for those jobs. The oldest dated card, if he wants the job, takes the job. If he doesn't, the next oldest has the choice, and so on.

Q. Now, what jobs are filled by rotary hiring? A. All jobs. All unlicensed personnel, of course.

Q. Now, is rotary hiring in conflict with promotions on a ship? A. Absolutely not. That requires a little detailed explaining, if I may, Mr. Examiner.

The Union, when drawing up contracts, bases its contracts on the needs of the men on the given fleet. Because of meeting their desires our contracts to some extent vary with different things. However, a basic part of the contract is to demand for the men fleet-wide seniority. I am speaking now particularly of the Great Lakes. Fleet-wide seniority is their right to return to a vessel each succeeding season. The same vessel. Also the right to be promoted if they have the next seats for the job. Our shipping rules which govern the rotary system of hiring from the Union halls are designed to meet the demands of the contract. That is what happens in practice.

Q. Is there anything in rotary hiring which can at any time compel a man to leave a job? A. Nothing. Under our system a man could go into the employ of the Company and remain there until the end of his life, because all our contracts provide for his vacations to return to the same ship; leave of absence; sickness, and so on, and so forth, indefinitely.

Q. Assuming that the position of wheelsman became vacant, and the master wished to promote a watchman to the position of wheelsman, would he be permitted to do so under rotary hiring? A. Under our contract; yes.

Q. Would it be necessary for him to call—

Mr. Hinslea: Now, Mr. Examiner, Mr. Lawrenson is apparently talking about some contracts. The best evidence is the contracts. I ask that the contracts be produced.

Mr. Rosenfeld: Mr. Lawrenson may refer to contracts occasionally. But I am asking him to describe the principle of rotary hiring, how it works.

Mr. Hinslea: He just testified about their contracts in rotary—

EXAMINATION.

Q. (By Trial Examiner Leff): Do the particular contracts qualify the principles of rotary hiring in some instances? A. There is no qualification at all. Contracts guarantee the right of men to be promoted on board the

vessel, so if a watchman were promoted to wheelsman, ar there were no other promotions, that actual vacancy th was created would be filled from the list in the hall.

Q. But that would be on a fleet-wide basis; would not? A. If the company so desired. If they wanted pick the oldest men.

Q. Isn't that all that this letter says? A. No; he they imply no promotions at any time, or, rather, the state baldly that no promotions are permitted under t rules. It says there—Mr. Ferbert says there "You can be promoted."

Q. But it goes on to say: "The vacancy must be fille by the man at the top of the list at the Union Hall."

Mr. Rosenfeld: That is true, Mr. Lawrenson?

Trial Examiner Leff: It is true?

The Witness: It is not true in the way it is expresse there. It is a downright misstatement.

DIRECT EXAMINATION (Continued).

Q. (By Mr. Rosenfeld): Now, let me come back this: If a man is shipped as a deck watch, is the Compar free to promote him to watchman or wheelsman if the Com pany wishes to? A. Absolutely, if there is a vacancy. a wheelsman vacancy occurs, and the man has the necessar qualifications, such as a—

Q. Must the Company fill the position through rotar hiring? Must it do so through the Union hall? A. N But under our contracts, an actual vacancy that might r sult either as a quitting, or as an opportunity of a prom tion, that vacancy must be filled from the hiring hall.

Mr. Hinslea: That is exactly what the letter says.

The Witness: Not at all.

Mr. Belkin: Let's not debate that question now.

Trial Examiner Leff: Let's proceed.

Q. (By Mr. Rosenfeld): Mr. Lawrenson, if the Com pany that promotes a watchman to wheelsman, and is pe mitted to do so under rotary hiring, without going to t Union hall—

Mr. Hinslea: He answered that once.

Mr. Rosenfeld: Just a moment, please.

Q. (By Mr. Rosenfeld): And the Company promot a deck watch up to the position of watchman— A. Yes.

Q. —leaving a deck watcher position open— A. Yes.

Q. —how is that position filled? A. That is filled from the hall.

Q. And the Company wishes to promote a deck hand to deck watch, then what position is filled? A. Then the deck hand's position would be filled from the hall.

Q. So the position to be filled from the hall is entirely dependent upon what the Company wishes to do, is that correct? A. That is correct.

EXAMINATION.

Q. (By Trial Examiner Leff): Is that during the season, or the beginning of the season? A. That is at any point during the season.

Q. Suppose the season ends, and then they are hiring a complement of employees for the succeeding season, is all hiring done strictly according to the rotary hiring, that is, hiring from the hall? A. No; under our contracts the men are guaranteed the right—we fight for that right to return to the vessels the succeeding season.

Q. To the same vessel? A. To the same vessel, yes. As a matter of fact, that has been fought by the Company on various cases before the War Labor Board, by the companies themselves.

DIRECT EXAMINATION (Continued).

Q. (By Mr. Rosenfeld): Mr. Lawrenson, if a man's name is at the top of the shipping list, and he refuses to take the first job opportunity which is offered to him, does he go back down to the bottom of the list? A. That varies. In peacetime the man was allowed the choice of three vessels. It should be borne in mind that the men on the list are men who have completely severed their employ with any company. Through their own accord, they voluntarily quit. They have neither a leave of absence or anything else. In peacetime the man was allowed the choice of three vessels. He could turn down—after the third one he had no further choice. He would go down to the bottom of the list. In war time we varied that.

Q. What is the practice on the Great Lakes? A. We generally allow them two.

Q. Is it true that if a man rejects the first offer he immediately goes down to the bottom of the list? A. No. It should be added at that point that the tightening up of shipping rules in that connection was in the interest of the war emergency in manning of the vessels.

Trial Examiner Leff: How many contracts do you have covering the Great Lakes vessels?

The Witness: Nine contracts and our other companies for which we are the collective bargaining agent. Presently there are 15 companies going before the War Labor Board.

EXAMINATION.

Q. (By Trial Examiner Leff): I asked you how many contracts? A. Nine.

Q. In each of those contracts you have a rotary hiring procedure such as you have outlined? A. The contract simply requires that all replacements shall come from the offices of the Union. That is all. The rules of the Union are voted upon by the majority of the membership, themselves. The shipping rules which I referred to as the rotary rule of shipping. Now, it should be borne in mind by the Board that the rotary—that the contracts protect the tenor of employment of the man on the vessel. He can stay there from the day he is born until the day he dies. The rotary system of shipping, as I described it, applies to those men in the Union hall who have completely severed their connection with any companies, of their own free will.

DIRECT EXAMINATION (Continued).

Q. (By Mr. Rosenfeld): On the rotary hiring, Mr. Lawrenson, is a man free to take a leave of absence from the ship without returning, and without going on the rotary hiring list? A. Absolutely. The clauses in our contract cover valid leaves of absence.

Trial Examiner Leff: No. At the end of a season when a man leaves his vessel, he is still considered an employee of that vessel, so he has a preferential right over all other employees to return to that vessel.

The Witness: We are the ones who fight for that right, and guarantee it to the men in the contracts.

Mr. Rosenfeld: That is all, Mr. Lawrenson.

CROSS EXAMINATION.

Q. (By Mr. Hinslea): Mr. Lawrenson, if a company that you have bargained with recognizes you, either—as the bargaining agent, either through certification by the Board, or by agreement between you and the Company, agree on a wage for the unlicensed men, could they pay this wage at this present time during this war emergency? Could they go ahead and pay the wage? A. Not without approval of the WLB.

Q. In other words, as I understand it, if you agree with some company on a wage, you just go to the Board for approval? A. Correct.

Q. And they either give it to you or deny it? A. Correct.

Q. Now, if the Company is not forced to deal with the Union either by certification, and they want to raise the rates of the men, they must go to the Government; do they not? A. On the voluntary petition, quite so.

Q. So that neither the Union nor Company have any right to pay any increases of any kind, overtime, bonuses or wages without the approval of the Government; is that right? A. That is quite right. And it should be added, too, that all the increases on the Great Lakes were initiated by the National Maritime Union before—

Trial Examiner Leff: That is not the question.

Q. (By Mr. Hinslea): I don't want to argue that, but isn't it a fact that the SIU Union first obtained the $22 increase for the D & C case before the War Labor Board?

Trial Examiner Leff: I am going to let him answer the question, but I think you are going away from the issues now.

Mr. Hinslea: As long as he got away from the issues, I would like to—

A. I think it involved $18.70, if I recall correctly in the D & C case. We topped it by a few dollars.

Q. You know it was $22.50 and you asked for $22.50? A. No; it was not.

Trial Examiner Leff: Let's get back on the trail again.

Q. (By Mr. Hinslea): On this rotary hiring system, do you have any published rules controlling the rotary hiring system? A. Yes.

Mr. Hinslea: I would like to ask Mr. Examiner, if a subpoena could be issued to the Union to produce any and all documents, whether they be the Constitution, By-Laws or contracts, or minutes that the Union has with reference to the rotary hiring system?

Trial Examiner Leff: Will you produce them?

The Witness: Very glad to do it.

Mr. Rosenfeld: We are very happy to produce the shipping rules for 1944, approximately the date of these letters.

Trial Examiner Leff: When will you have them here?

Mr. Rosenfeld: How quickly can we have them here, Mr. Lawrenson?

The Witness: I thought we could have them here in a couple of days.

Mr. Hinslea: I thought this, Mr. Examiner, at the conclusion of this testimony, I am going to ask for a postponement before I present mine. I wondered by the time we present our testimony, if the Union would have these documents here with Mr. Lawrenson so I could cross examine him?

Trial Examiner Leff: I am going to request the Board to have those available before the end of the hearing.

Mr. Belkin: We will.

Trial Examiner Leff: Now, will you also want to cross examine this witness?

Mr. Hinslea: I would like then to reserve any questions on the rotary hiring system after I see these.

Trial Examiner Leff: The only point is, the witness has informed us that he intends to leave town at the conclusion of today's session.

Mr. Hinslea: Could you, Mr. Lawrenson, arrange some time when the examiner is out here, and you are in Detroit, to come over and allow me, after getting these, to cross examine you on these, this rotary hiring?

The Witness: I should be very happy to do it, if it doesn't cause delay in the proceedings.

Mr. Hinslea: No. I think when we go forward with our case we will fit it in. If you can do it.

The Witness: It is all right with me.

Mr. Hinslea: With that understanding, I won't cross examine Mr. Lawrenson any more.

The Witness: If I can't get it—get in to do it, perhaps you can get a union official from the Great Lakes.

Trial Examiner Leff: Why don't you complete your cross examination, except for that part which will deal with the interpretation of—

What do you call this?

The Witness: The rotary system.

Trial Examiner Leff: Not of the rotary system.

The Witness: The shipping rules.

Trial Examiner Leff: Of the shipping rules.

Mr. Hinslea: That is the same thing. I think shipping rules and rotary hiring system—

Trial Examiner Leff: I imagine the rotary hiring provisions are part of the shipping rules, but the shipping rules are much broader.

The Witness: May I just say, the word "rotary" applies to a principle. Actually, there is no rotation. It applies to a principle in the Union of first in, first out. That is all it means. The shipping rules are something else again. It is a principle. It is a foundation of killing favoritism.

Q. (By Mr. Hinslea): As I understand, the shipping rules of the rotary hiring system, the fundamental principle is that if a man lays up a ship in the fall, he is entitled to go back to the same ship in the spring? A. That is guaranteed him by the contracts, Mr. Hinslea.

Trial Examiner Leff: If there is a vacancy in the higher classification, does he have a preference to that vacancy ahead of other people in the general hiring rule?

The Witness: If he has the qualifications under the contract he has a right to be promoted to that job.

Trial Examiner Leff: The question of qualifications is a matter of concern to the Company, not to you.

The Witness: The Government, too.

Trial Examiner Leff: I mean, primarily, a concern of the Company. If the Company says he has qualifications, does the Union raise any objection?

The Witness: Our contracts call for length of service. The contract says varying degrees of service.

Q. (By Mr. Hinslea): Mr. Lawrenson, let's assume that one John Jones who was a wheelsman on the steamer Samuel F. B. Morse, laid the boat up, and he wanted to ship on the steamer Peter A. B. Widener, as a wheelsman the

next spring, he would not have any seniority on that job, would he, under your system? A. On that particular job?

Q. The wheelsman's job. He wanted to ship—he wanted to shift from the Morse to the Widener the next spring. A. The jobs are equal?

Q. Yes; wheelsman's job. A. It depends on what basis he wanted the job on the Widener. If you can give me that, I can give you an answer.

Q. Oh, the mate was promoted, and he wants to go from the Morse over to the Widener, because he likes to ride with the mate.

Could he do that under your system? A. We have no provision, because we never came across those situations. We have no provisions in the shipping rules that if a man wants to follow a certain mate he may do so. That would be stupid in a large organization. But I would say this to you, that if a transfer was mutual between the Widener wheelsman, and the wheelsman on the Morse, I am sure there is nothing in the Union that would—

Q. No. You don't get the question. There is a vacancy on the Widener. It isn't a question of a mutual exchange between the wheelsman on the Widener, or the Morse. There is a vacancy on the Widener. Can that vacancy be filled by a man off the Morse who wants to go over, or must that vacancy be filled from the top of your list in the hall? A. Under the rules that vacancy on the Widener should be filled from the list, the man on the top of the list in the hall. Now, let me add this: If the man on the top of the list was willing to take the job on the Morse so the man on the Morse could go over to the Widener, I am quite certain there would be no objections.

Q. But that is a separate issue. You say you are quite sure that might be arranged. But that isn't the rule, is it, if there is a vacancy, and the man on the Morse, who is not on your list wants to go to the Widener, because the mate is there, you couldn't let him go there because that would deprive the top man on your list from having a job; wouldn't it? A. It would not, because there is a vacancy—

Q. Now, if the top man on the list wanted the Widener job, and not the Morse, you would give him the Widener job; wouldn't you? A. Definitely.

Q. Now, if you have a deck hand, and the captain wants to promote him to watchman on a ship, because there

is a vacancy, can that captain promote that man without clearing or taking it up with the Union? A. Definitely out of the contract; yes.

Q. I thought you said there was nothing about that in the contract. A. About promotions.

Q. The only thing in the contract was he could return to the same ship? A. I said definitely we allow for promotions in the contract.

Q. That is why I want you to produce these contracts, and see it. Now, if a deck hand can be promoted to watchman, doesn't that disturb your rotary hiring system? What rights has this man who has worked his way through the top of the list? A. It does not disturb the rotary hiring system. It applies to the man actually in the hall. Under our contracts, men have the right of long service employment if they so desire. A man has a right to be promoted, if he so desires, under our contracts.

Q. Without taking it up with the Union? A. That is right.

Q. And that is in your contract? A. That is correct.

Trial Examiner Leff: What is fleet seniority?

The Witness: By the way, that is another misstatement as far as the policy of the—

Trial Examiner Leff: I am not asking you that. I am asking you what it is.

The Witness: The Union fights for the right of men on a given fleet to accumulate the longest service. In the event of a lay-off, or laying up of vessels, going out of operation, that the men with the longest service will be kept as employees. The implication in this letter was that we were against that, when, as a matter of record, we fought for that before the National War Labor Board, and it was fought in turn by the Company. They ruled out our plan for fleet-wide seniority.

Q. (By Mr. Hinslea): Now, Mr. Lawrenson, if this deck hand is promoted to the watchman's job,—and that pays considerable more money, don't it? A. Yes.

Q. Without your knowledge or the Union's representative, without being cleared through your hall, and the man at the top of the list wants to ship out, and the only job you had available was this deck hand's job on the Morse, then you would send that top man to that deck

hand's job. A. No. If there was a deck hand registered as deck hand, the oldest deck hand will get that deck hand's job. A wheelsman wouldn't necessarily—

Q. Well, the oldest watchman sitting in the hall would have to step aside so this young deck hand could be promoted on the Morse? A. But they register in ratings. They are—get it clear.

Q. I am getting it clear. It isn't—now, wait a minute.

Mr. Belkin: Let him finish his answer.

Trial Examiner Leff: Yes. I want him to finish his answer.

Q. (By Mr. Hinslea): The wheelsman registers—the watchman and wheelsman, and so on? A. That's right.

Q. If a deck hand on the Morse, and under the circumstances he doesn't even have to be an A.B. under the wartime ruling—if the captain elected to promote him, a 17-year old boy, from a deck hand to a watchman, and you had an A.B. in the category of watchman at your hall asking for a watchman's job, it is your testimony that the man at the top of the list, this watchman, this A.B. could not go to the Morse; but the captain could promote the deck hand without consulting with you at the Union, and the man would stay in the hall waiting for another job? A. That is correct.

Q. That is correct. A. But add this: I am a little nervous of your wartime qualifications. The contracts where we allow for promotions state that the man's duties must be duly qualified. The contracts were all written in peacetime. We say that probably in a wartime promotion of that kind, where the deck hand, in our opinion, was not fit—and many of them weren't fit—we might challenge it on that occasion; not because it was desirous of getting the watchman out of the hall, but actually the watchman promoted might not be fit for the job, as against a qualified watchman in the hall with a regular A.B. ticket.

Q. Now, to extend this thing—I don't want to carry it too far—it is possible that you might have a deck hand who is quite competent being promoted without taking it up with you at all, and you might have a competent watchman who might sit in the hall three or four weeks waiting for a job. A. For a watchman's job; correct.

Mr. Belkin: No further questions.

Mr. Hinslea: On the subject of the producing of that document—

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: Off the record.

(Discussion had off the record.)

Trial Examiner Leff: On the record.

The hearing is adjourned until 9:30 A. M. tomorrow morning at the same place.

(Whereupon, at 5:30 o'clock, P. M., Thursday, July 26, 1945, the hearing was adjourned until tomorrow, Friday, July 27, 1945, at 9:30 o'clock, A. M.)

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702 Public Square Building,
Cleveland, Ohio,
Friday, July 27, 1945.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 A. M.

(Appearances omitted.)

Trial Examiner Leff: The hearing is in order.

Mr. Belkin: At this time, Mr. Examiner, I want to call William Lee to the stand.

WILLIAM LEE, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Q. (By Mr. Belkin): What is your full name and address, please? A. William Lee, 1874 Ferney Avenue, South Dearborn, Michigan.

Q. Were you at any time employed by the Pittsburgh Steamship Company? A. Yes; I was.

Q. Can you tell us when that was? A. I joined the ship in the Port of Detroit, around the 22nd of March, 1944; and left the employ of the company on the 8th of September, 1944.

Q. What was the ship? A. The William J. Filbert.

Q. What was your job aboard that ship, Mr. Lee? A. Fireman.

Q. Do you recall the name of the Captain? A. The Captain's name was C. J. Brinker.

Q. Who was the Chief Engineer? A. The Chief's name was Curry.

Q. And who is the first assistant? A. The first assistant's name was Turner, Fred Turner.

Q. Do you remember the second and third assistants? A. The second assistant's name was Joe DeSota, and the third assistant's name was Harry. I don't remember his second name.

Q. Were you a member of the N.M.U. when you boarded this ship? A. I was.

Q. Did you engage or participate in the organizational campaign of that union aboard the Filbert? A. I did.

Q. Just what were your activities in that connection? A. Distributing National Maritime Union literature, joining the boys up in the Union, talking to the help on the ship in general.

Q. Did you receive all the N.M.U. literature to be distributed aboard the ship? A. I don't know whether I received all of it. I received part of it.

Q. Is there any N.M.U. literature that was sent aboard the ship that you did not receive first? A. I don't know. I can't prove that.

Q. When you were aboard the ship did you see a copy of the pamphlet entitled: "N.M.U. Fights Jim Crow"? A. I did.

Q. Did you bring that aboard ship? A. No; it was mailed to me.

Q. Can you tell us or describe for us the envelope in which that pamphlet came, Mr. Lee? A. It was a long, ordinary mailing envelope. My rating and the name of the ship was on it.

Trial Examiner Leff: Incidentally, do you intend to introduce that leaflet or pamphlet during the course of the hearing?

Mr. Belkin: I may not within the next day or so, but before the hearing is over I hope to have that copy.

Q. (By Mr. Belkin): How many copies of that pamphlet did you, yourself, see aboard the ship? A. Oh, numerous. There was six firemen in the room, and they all received copies of it.

Q. While you were on board the ship, Mr. Lee,—I am handing you what has been marked for identification as Board's Exhibit 4. Did you see that? A. I certainly did.

(Thereupon, the document above referred to was marked Board's Exhibit No. 4 for identification.)

Q. Where did you see it? A. It was presented to me in my bunk by the submate.

Q. Do you recall when you were given it? A. I would say, oh, that would be around the middle of or the latter part of May. Somewhere around there.

Q. To your knowledge did any other member of the crew receive a copy of that pamphlet? A. Each one received it individually.

Q. Did you see other men get it? A. I did.

Q. Who gave it to them? A. The third mate.

Q. In your presence? A. That's right.

Mr. Belkin: At this time, I offer Board's Exhibit No. 4 in evidence.

Trial Examiner Leff: Show it to Mr. Hinslea, please.

Mr. Hinslea: Well, Mr. Examiner, is it the intention of the Board to prove that the company furnished this, or mailed it, or got it around?

Trial Examiner Leff: Well, the witness testified that the sub-mate, who, concededly is a supervisory employee distributed it to this witness, and to others aboard the ship.

Mr. Belkin: That is our contention.

Trial Examiner Leff: That is what the testimony shows.

Mr. Hinslea: No; I have no objection.

Trial Examiner Leff: There being no objection, it will be admitted.

(The document heretofore marked Board's Exhibit No. 4 for identification was received in evidence.)

Q. (By Mr. Belkin): I am now handing you what has been offered as Board's Exhibit No. 2, and I will ask you if you have ever seen that before? A. Yes; I did.

Q. And when did you see this, Mr. Lee? A. Oh, that would be about the—say, around the 10th or 12th of May.

Q. Where did you see it? A. It was mailed to me on the ship.

Q. In an envelope? A. Yes, sir.

Q. How was the envelope addressed? A. To my rating, care of the ship.

Q. William Lee— A. No. No. Just Fireman.

Q. And the name of the ship underneath that? A. That's right.

Q. In other words, the Filbert? A. That's right.

Q. Was it postmarked? A. I don't remember whether it was postmarked or not. It was mailed.

Q. I now hand you what is marked Board's Exhibit 3, and I ask you, Mr. Lee, if you have ever seen that before? A. Yes; I did see this.

Q. When did you see it, Mr. Lee? A. Oh, that would be in June sometime. That would be—

Q. Of 1944? A. 1944; yes.

Q. Where did you see it? A. On the ship.

Q. At what place in the ship? A. In the firemen's room.

Q. Was it put up on a bulletin board? A. No; there was no bulletin board on our ship; nothing like that allowed.

Q. Was it given to you? A. It was mailed to me.

Q. And you found it in the fireman's room in which you stayed? A. That's right. That's right.

Q. Now, Mr. Lee, while you were on board the ship, did you at any time—

Trial Examiner Leff: Before you go into that, I have been glancing at Board's Exhibit 4.

Do you recall when you received this with reference to the election?

The Witness: I testified it was around the middle of May.

Trial Examiner Leff: Oh, all right. The election was in June; is that right?

Mr. Belkin: It began on June 6, and I believe was completed by the 12th.

Q. (By Mr. Belkin): I was asking you, Mr. Lee, whether at any time while aboard ship you discussed the union with any member of the licensed personnel? A. With all of them, everyone of them.

Q. Directing your attention to the Captain of the ship, Captain Brinker, I believe? A. That's right.

Q. When and where did you hold a conversation with the Captain? A. Well, the first—I held repeated conversations with the Captain, and—

Q. Well, if that is the case, let's take the first conversation that you had with the Captain. Do you recall when and where that occurred? A. Yes; I do.

Q. Well, tell us, please? A. In the fireman's quarters while I was in my bunk.

Trial Examiner Leff: All right. Now, tell us how you happened to have that conversation with the Captain. Did you start the conversation?

The Witness: I was in my bunk reading. When come into the Port of Ashtabula—that is where it took place—we came in an oiler short, and two firemen got drunk while on watch—

Q. (By Mr. Belkin): What I want to know, first of all, is some statement from you as to the time of year. Of course, you told us the ship came into Ashtabula? A. That's right.

Q. If you could possibly, to the best of your recollection, fix the time when your ship came into Ashtabula, we would appreciate that. Can you do that? A. Well, the date would be around, say, the 18th or 20th of April. Somewhere around there.

Q. You were in your bunk, in your room? A. That's right.

Q. About what time of day was it? A. Around 9:00 in the evening.

Q. And you say that the Captain came into your bunk and addressed you? A. Came into the room.

Q. Or he came into your room and addressed you while you were in your bunk? A. That's right.

Q. Was anyone else present? A. The fellow in the bunk above me.

Q. What was his name? A. Pitts.

Q. Was anyone else present? A. That was the only one in the room.

Q. Now, tell us if you can what, if anything, the Captain said to you when he came into the room at that time? A. That is what I was leading up to.

Q. Well, you just tell us what he said, and you can explain it if you wish. A. The Captain said—he yanked the curtain off where I was laying reading in the bunk. He called me a no-good fuckin' bastard; that I was driving these men off the ship, and he stamped right out of the room again.

Q. What did you do? A. I was amazed. I lay there thinking: What is this all about? I didn't get the drift of this at all. I got up and dressed, and went on deck. He was in front of the galley. The rest of the crew was adjacent there. He was stamping up and down, and just foaming at the mouth. He started on me again.

Q. Did he speak to you again? A. He started in and repeated the same thing again that I was no goddamn good. I was driving the men off the ship because of the union. We was phoney. He called us everything that was terrible at that time. I tried to tell him I had absolutely—and I didn't know anything about it at the time—

Trial Examiner Leff: About what?

The Witness: About these men leaving the ship.

A. (Continuing): He started—and raved there. That went on probably 45 minutes or an hour, the two of us arguing back and forth. I, trying to clear myself, and him accusing me of everything that was rotten.

Q. (By Mr. Belkin): Was anyone else present on deck during this conversation? A. The whole ship's company was there, probably.

Q. Now, Mr. Lee, will you explain the incident to which the Captain was referring? A. Yes; I can. When we came into the Port of Ashtabula, we were one oiler short. These two firemen had a squabble while they were on watch. They went ashore and got drunk, and came back and quit. One of the coal passers got a telegram that his mother had died; to come home to the funeral. Another coal passer quit with him at that time. That left the ship 5 men short. The Captain accused me of this, of driving these men off the ship.

Q. Did you have any knowledge prior to the Captain's speaking to you of what had gone on? A. I had, to a certain extent, about the firemen.

Q. What did you know about the firemen? A. I was on deck when they came back drunk, raising hell on the ship. They tried to pick a fight with a watchman. I see there was trouble brewing there, and I went down to my bunk.

Q. How did you learn about the rest of the incident, about their quitting, and about their getting drunk? A. When I went on deck to find out what it was all about.

Q. You discovered by your observation what had occurred? A. That's right.

Q. Now, did you thereafter have another conversation with Captain Brinker? A. About three times a week I had this with the Captain, up until the first of June, from that time on about three times a week we had that.

Mr. Hinslea: You had what?

Mr. Belkin: He said conversations.

Q. (By Mr. Belkin): Now, of these conversations which you testified occurred three or four times a week, how many of them were on deck, on the deck of the ship? A. The most of them were all on deck.

Q. And do you know if during these conversations, any members of the crew were present? A. Anybody on the ship would be present. He talked so loud that everybody could hear him.

Mr. Hinslea: Well, I object to that, Mr. Examiner. That is not responsive.

Trial Examiner Leff: Yes. Strike that.

Did you see anybody present?

The Witness: I did.

Trial Examiner Leff: All right. Go ahead.

Q. (By Mr. Belkin): Do you recall specifically any member of the crew who were present during these conversations? A. Yes; the watchman, and three deckhands, and the deckwatch.

Q. Was it always the same group of men that were present during these conversations on deck? A. No; it wasn't.

Q. Were there any others in addition to the men you have named who were present? A. Yes; we frequented the hatch there just ahead of the coal bunk, where the boys used to sit around. That is where the discussions generally took place.

Q. Well, now, referring to these three or four conversations a week, which began shortly after this talk you had with the Captain, and about the firemen quitting the ship, can you tell us, if anything, the Captain said to you thereafter?

Trial Examiner Leff: What do you mean?

Mr. Belkin: After this first conversation.

Trial Examiner Leff: All right. Go ahead.

Q. (By Mr. Belkin): In other words, I am directing your attention to the series of conversations which you say occurred after this first one. Now, what if anything did the Captain say to you, and what if anything did you say to him? A. Well, I was on the 2:00 to 6:00 watch. The first assistant's watch. We split the watch. It was a two man job. We split the watch. I had the last hour off. I would be on deck just as the boys were coming back from supper. That is when the Captain would come back. Almost everytime he came back this conversation would go on that the union was no fuckin' good; nobody in it was any goddam good; their principles were rotten; they were lying bastards, and every thing to that effect.

Q. Did you at any time give the Captain a copy of your publication—by that I mean, the Pilot? A. He asked for one every time I brought it back to the ship.

Q. Did you give him a copy of that? A. I certainly did.

Q. Did you ever discuss any of the questions that were in the Pilot, or any questions that were raised in the Pilot? A. Naturally, that is where he got his information from to discuss with me.

Mr. Hinslea: I object to that.

The Witness: He told me that.

Trial Examiner Leff: Does your objection still stand?

Mr. Hinslea: Well, if he told him that—

Trial Examiner Leff: That probably cures it.

A. (Continuing): He would quote from the Pilot; "I see in the Pilot—the Pilot you gave me reads," such and such.

Q. (By Mr. Belkin): Well, now, in his quoting from the Pilot, to the best of your recollection, what were the issues discussed? A. Well, the Jim Crow Law. He played on that. The different minutes of the ships; what the boys were asking for.

Trial Examiner Leff: What was his position? What do you mean that he played on the Jim Crow—

Mr. Belkin: I think we can get a clarification of that.

Trial Examiner Leff: Well, all right. Do it your own way.

Q. (By Mr. Belkin): I asked you what were the matters which were discussed by yourself and the Captain

arising from his reading of the Pilot? A. Well the nigger situation, as he called it, was the first that he played on. Then there was the conditions on the different ships, from the minutes of the different ships meetings, such as the food, overtime, the rotary shipping list. Any article where he could pick a scot with me. He said he read it. He got it in the Pilot; it must be ' e, because there it is in the Pilot, he would repeat.

Q. Well, now, referring to his discussion of the issue of as you put it, the nigger question, just what if anything did the Captain say about that issue? A. The Captain said we were a bunch of nigger loving bastards, and if we organized the—

Mr. Hinslea: Wait a minute. Now, go slow. I want to get this all down.

Trial Examiner Leff: We can read it back.

Go ahead.

A. (Continuing): If the union won the election, we would load the ships with niggers.

Q. (By Mr. Belkin): What, if anything did you say to the Captain? A. I denied that statement of his, pointing out that that was probably prevalent on the course, but it would never take place in these Lakes, which I was sure of that.

Q. What, if anything did the Captain say to you concerning the food question and these other problems that arose aboard ship?

Trial Examiner Leff: Let's take one at a time. What did he say about the food question?

Mr. Belkin: I thought we had—I thought they were really—

A. We discussed the conditions on the union ships compared to the Filbert. That was one of the—

Q. (By Mr. Belkin): Well, will you tell us what the Captain said to you about that to the best of your recollection? A. He commended his cook. He said he had the best cook on the Lakes. I told him he had never eaten on an organized ship, or he wouldn't say that. He wanted to know what was wrong with the food. I said, "Absolutely nothing. There is nothing wrong with the day meals; but there is never no night lunch." Every time we went on watch at 2:00 in the morning, we didn't get a cup of coffee.

I spoke to him about that. He called me a fuckin' liar. I told him to come down at 2:00 in the morning and try to get a cup of coffee.

Q. You stated that the Captain discussed the overtime question with you. What, if anything, did he say about that? A. He said it was a lot of bull shit; that people should do their work in eight hours and go ashore and pay them overtime or anything like that, he didn't believe in.

Q. What, if anything, did he say about the rotary shipping list? A. He condemned the rotary shipping list, and said it was no good; if he couldn't take his crew with him any place he went, then he was no longer a Captain of a ship.

Q. Now, thereafter, did you have any other conversations with Captain Brinker on the matters touching the union? A. Yes; I did.

Q. When did they occur? A. As I said before, each time he came back, this went on and on.

Q. Well, what would the Captain say to you? A. Around the latter part of May, if I can recall it right, we had a heated discussion on deck. He told me—the Captain said, "If this thing does organize and before the contract is signed, I am going to hire a big nigger to be your partner, and the blacker the better."

(The last answer was read.)

Q. What if anything did you say to that? A. I replied—I said to the Captain, "That is fine. I will kiss the poor guy when he comes aboard ship. But you let the crew know you hired him and not the union." I pointed out that he had been using this Jim Crow pamphlet right along, and now he threatened to hire one of the niggers, as he called them.

Q. Now, while you were on board ship, Mr. Lee, you testified there were—and I think you named the individuals who were your supervisory officers. Did any other supervisory officer of the company come on board the ship? A. Yes; there was.

Q. And who was that officer? A. Mr. Zyp.

Q. Who is Mr. Zyp? A. As far as I know, Mr. Zyp is the personnel manager of the Pittsburgh Steamship Company. Something like that.

Trial Examiner Leff: Is he related to that Zyp we had mentioned here yesterday?

Mr. Belkin: I think he is a brother.

Trial Examiner Leff: The Chief Engineer, or Second—

Mr. Hinslea: I don't know. It is an odd name. But I can't state that as a fact.

Mr. Belkin: This gentleman seems to think so. (Indicating.)

Mr. Hinslea: If this man doesn't know who Zyp was, I ask that the answer be stricken.

Trial Examiner Leff: Well, what is he? Let's get a concession from counsel for the respondent.

Mr. Hinslea: He is not the personnel manager. He is a clerk in the Pittsburgh Steamship Company. He is not a supervisor at all.

Trial Examiner Leff: Is he in the personnel office?

Mr. Hinslea: No, sir.

Mr. Belkin: If the company wishes to maintain that is so, we will bring them evidence to show just what Mr. Zyp does.

Trial Examiner Leff: Well, I will let the testimony stand, and you can cross examine him on that as to the basis for his belief that he is the personnel manager.

Go ahead.

Mr. Hinslea: Is it the contention of the Board that Mr. Zyp is the personnel manager?

Trial Examiner Leff: Is it?

Mr. Belkin: Our contention is that Mr. Zyp is in the personnel office of the company, and has hired individuals who work, as employees of the Steamship Company. The Board will, today, if necessary, put in evidence testimony by two individuals who were hired by Mr. Zyp.

Trial Examiner Leff: All right.

Mr. Hinslea: Well, that is an entirely different statement. They were saying that Mr. Zyp was the personnel manager. I say he is not the personnel manager. He is a clerk in the personnel department, and does receive applications for employment.

Mr. Belkin: That isn't what you said before. You said he wasn't even in the personnel office.

Mr. Hinslea: Read the record.

Trial Examiner Leff: First of all, I want you gentlemen to address your remarks here. I don't think it is

tremendously—first, we would like to know just what is the exact position of this gentleman. The principal point here is to determine whether he is that type of employee whose remarks or statements would be attributable to management. I take it that you deny he is, Mr. Hinslea? You say he is simply a clerk. Mr. Belkin, on the other hand, says he is a person who hires employees, and one whom employees might look upon as a management representative. That is an issue which will have to be settled by taking evidence on it.

Mr. Hinslea: That's right.

Trial Examiner Leff: All right. Go ahead.

Q. (By Mr. Belkin): Did you discuss this Mr. Zyp's visit with any member of the licensed personnel? A. I did.

Q. With whom? A. With the Chief Engineer.

Q. When did you do that? A. When I came back to the ship that day.

Q. Can you fix the time that Mr. Zyp came aboard the ship? A. It was in Port Lorain. That would be, oh, sometime in May. Sometime the forepart of May.

Q. Where did you talk to the Chief Engineer? A. In his room.

Q. What, if anything, did the Chief Engineer say to you, and what, if anything, did you say to him? A. When I came back to the ship he called me around to his room, and told me that Mr. Zyp had been aboard, and wanted to know why they were carrying me. It seems that Mr. Zyp wanted me fired. He told me that he told the Captain that if they fired me, he would go, too.

Q. Did he tell you why he said that to the Captain? A. I guess it was because of my ability, or something. I don't know.

Q. Did he tell you that? A. He did.

Q. Did you at any time discuss with the Captain the statements that you or he had made to members of the crew? A. I did.

Q. Will you tell us when that occurred? A. Well, that was the last discussion we had. That was on the first of June. That happened in the—well, we had left the lower Lakes. We were crossing Lake Erie, I believe. I had come off watch in the morning, and was standing in the

fantail. I had this same thing repeated again: "No good bastard," and all this stuff.

Mr. Hinslea: Wait a minute. Now, who said that?

The Witness: The Captain.

A. (Continuing): I didn't know it was directed to me. It still continued. I wanted to see what was going on. The Captain was shaking his finger in my face, and poking his finger in his eye, and accusing me of lying to the crew.

Trial Examiner Leff: When was this?

The Witness: The first of June.

Q. (By Mr. Belkin): What if anything did you say? A. I said, "What have I been lying about?" He said it was the rotary shipping list. I asked him who it was. He pointed in the galley, and said, "That little porter in there."

Q. What was the porter's name? A. Conn. I don't remember what his first name was. Just then the porter came out to dump some of the garbage in the Lake. I called him over and asked the Captain if this was the boy I had been lying to, as he said. He said, "Yes." I asked the boy, in front of the Captain, if I had explained the rotary shipping list to him. He said that I did. I asked the boy to tell the Captain what I told him; and he did. I said to the boy, "Are you sure that is what I told you?" The boy said, "Yes." He shook his fist in the boy's face, and called him a fuckin' little liar; and said, "That is not what you told me."

Q. Did Conn leave at that time? A. I told the boy to go on in. Because I had called him over. I told him he could go about his business.

Q. Did Conn stay aboard the ship thereafter, or did he leave? A. He got off the ship the next trip down.

Q. Did you at any time discuss with Conn the reason for his leaving? A. I asked him afterward, after supper that night if he had been—you know, when—I told him to forget the whole incident. I said, "Don't let that bother you. You are doing all right." When he was getting off the ship, I asked him if he had been fired. He wouldn't tell me that.

Q. Did he give you any reason at all? A. No; he wouldn't answer me. So, I—

Q. When you asked him that question was anyone else present? A. No; there wasn't.

Q. Do you know how old the Conn boy was? A. Oh, just a kid about 17½ or something like that. Seventeen and six months.

Q. Now, Mr. Lee, do you recall if anyone was present at the time you and the Captain discussed the matter of Conn, and what you said to him? A. No; there was just the three of us at the fantail.

Q. Will you repeat for me the place where that conversation occurred? A. It took place right at the head of the gangway leading into the lower fantail, down to the quarters below.

Q. Where is that on the ship in relation to the galley? A. That would be, oh, I'd say 12, 14 feet from the galley door.

Q. Was anyone to your knowledge present in the galley at the time of this conversation? A. The galley crew was going ahead with their watch.

Mr. Hinslea: He has already answered that. Don't keep repeating that. He answered it.

Trial Examiner Leff: Well, is there any harm in having it twice?

Mr. Hinslea: I don't know. I have always had the practice of not trying to fill up the record.

Trial Examiner Leff: I know, but we are filling it up more by this colloquy.

Q. (By Mr. Belkin): You testified, Mr. Lee, that when you and the Captain had these conversations on the deck of the ship, that other members of the crew were on deck? A. That's right.

Q. Do you know whether they heard your conversation?

Mr. Hinslea: I object to that.

A. They certainly did.

Mr. Hinslea: I object to that.

Trial Examiner Leff: Wait awhile. Well, does he know? I will let him answer that yes or no.

Mr. Belkin: He already answered it.

The Witness: I do.

Trial Examiner Leff: How do you know?

The Witness: Because the 1st Mate told me he didn't know how I took that stuff. So, he must have heard, or he couldn't say that.

Mr. Hinslea: He hasn't testified the 1st Mate was there. He hasn't testified who was there. Now, he comes along and says the 1st Mate asked him: how he took this stuff.

Mr. Belkin: I think the testimony of the witness, as evidenced by the record will show that he has testified that at various times every member of the crew heard these conversations on the deck of the ship.

Trial Examiner Leff: Well, the record will speak for itself. The record will be examined. Let's proceed.

Q. (By Mr. Belkin): Did any other member of the crew, to your knowledge hear the conversation? A. The crew in general heard all the conversations.

Q. How do you know? A. Because the crew would come to me afterwards and comment on what was said at the conversations.

Q. Where would they meet you and discuss this with you? A. In the mess room, or in the quarters, or on the deck, and in general.

Q. Do you recall the names of any of the members of the crew who came to you after these conversations and discussed them with you? A. Yes; this Pitts was one.

Q. Can you tell us any others? A. There was an oiler by the name of Beam, and the coal passers. Everybody. I don't recall everybody—

Mr. Hinslea: I object to this general testimony of "everybody." Now, that—

Mr. Belkin: All right. Let's see if we can't make it a little more definite for Mr. Hinslea's benefit.

Mr. Hinslea: Not for my benefit. For my client's benefit.

Q. (By Mr. Belkin): Now, Mr. Lee, you say the coal passers were present, too. Can you name them for us? A. The coal passers changed. We changed and changed crews all the time. We had a flock of boys on the ship making one trip, and getting off. The next time we would have another one. He would hear it. The same on and on.

Mr. Hinslea: I object to that now. "That he would hear it."

Trial Examiner Leff: Well, what are you trying to establish, that there were other members of the crew at one

time or another who were present and overheard the conversations?

Mr. Belkin: Yes.

Trial Examiner Leff: You have testimony like that in the record. Why elaborate on it?

Mr. Belkin: I want to prove by questioning this witness that these members of the crew were present, and also, further, that—

Trial Examiner Leff: If he is going to testify about it, you better not announce what you want him to testify to.

Mr. Belkin: Well, he has already testified to that. I am just trying to answer your question. The very fact that he has already testified that they heard him, and heard them hold these conversations is all that I want in the record. And it is in, but in order to avail Mr. Hinslea of every possible opportunity to investigate this matter, so that he may in his case put this on, I am attempting to identify the crew in so far as possible.

Trial Examiner Leff: You are doing it for the benefit of Mr. Hinslea; and Mr. Hinslea objects to your doing it.

Mr. Hinslea: I don't want any help from you.

Mr. Belkin: And, further, in so doing, I think the Board is showing that the facts, as we have evidenced them, and have offered them, are absolutely true.

I have no other questions.

Trial Examiner Leff: All right. Now, we will hear from Mr. Hinslea.

CROSS EXAMINATION.

Q. (By Mr. Hinslea): Is this your first sailing for the Pittsburgh Steamship Company? A. Yes, sir.

Q. How long have you been sailing on the Lakes? A. Since 1936.

Q. You came from salt water? A. No; I didn't come from salt water, not right then.

Q. How long have you been sailing? A. I started in sailing in the British Navy when I was a kid, in the last war. Five years and four months in the war. Honorable Discharge.

Q. Yes. Now, I am asking you how long you sailed in the Merchant Marine? A. Well, on the Lakes here since 1936.

Q. Did you have any experience in the Merchant Marine on the ocean? A. No; I didn't.

Q. So your first experience has been on the Great Lakes in 1936? A. That's right.

Q. And '44 was the first time you shipped on a Pittsburgh boat? A. That's right.

Q. Did you go aboard the Pittsburgh boat as an organizer? A. I did voluntarily.

Q. Voluntarily? A. Yes, sir.

Q. And you shipped out of the Hall at Detroit? A. No; I didn't.

Q. Well, I mean, you were around the Detroit Hall? A. No; I was on a ship. I quit the one ship to go on the Filbert.

Q. I see. What ship had you been on? A. The James Watt.

Q. She is a Nicholson ship? A. That's right.

Q. Were you a Fireman on her? A. Yes, sir.

Q. How long have you been a Fireman on the Lakes? A. Been a Fireman and Oiler since 1936.

Q. Now, what ship did you—did you go on a ship as Fireman the first time that you sailed? A. As an Oiler.

Q. The first time you ever sailed you went on as an Oiler? A. That's right.

Q. What ship was that? A. The J. Oswald Boyd, chartered by the Nicholson Universal Company, tanker.

Q. How did you get an Oiler's certificate without any Lake experience before that? A. They didn't need any Oiler certificates at that time.

Q. You didn't need an Oiler's certificate in '36? A. No, sir.

Q. Now, how long were you on the Boyd? A. All season. Two trips before she went on the reef, the Simon's Reef.

Mr. Belkin: Mr. Examiner, I move this entire line of questioning and answers be stricken from the record, because it is immaterial and irrelevant to the record.

Trial Examiner Leff: I don't know what he is leading up to. I confess I don't see the relevancy or materiality. But he may have a point. I don't want to check him at this stage.

Mr. Belkin: I will withdraw my objection.

Q. (By Mr. Hinslea): How many months did you put in on the Boyd that season? A. Around seven months.

Q. Was that the season that you stranded on Mackinac? A. That's right.

Q. Around '37 did you sail? A. I didn't sail in '37.

Q. You did sail in '38? A. I did.

Q. How long? A. Joined—I got my book in '37, and my Fireman and Oiler tender certificate, because I had enough tonnage in '36 to acquire that.

Q. Seven months? A. That's right.

Q. You are sure of that? A. That is what the steamboat inspector in Toledo told me.

Q. You gave certain information under oath as to the service you had; didn't you? A. I had to get the tonnage and that together.

Q. Did you tell the inspector that you had been sailing seven months as an oiler? A. I didn't have to tell him.

Q. Did you put it on the application? A. I had to show the seven months' tonnage, and show my discharge.

Q. You showed them the discharge of seven months? A. That's right.

Q. And on that basis they gave you an Oiler's certificate? A. That's right.

Q. Now, how long did you sail in '38? A. All the season, on and off.

Q. What ship? A. I started in the D and C Fleet on the Cleveland III, bottom Oiler.

Q. Did you belong to the N.M.U. Union then? A. No.

Q. What union? A. S.I.U.

Q. How long did you stay on the Clipper III? A. Up until the automobile—the automobile business started up again in the fall. I left Cleveland and joined the Crescent City.

Q. You say the fall. Now, can't you give me some better date? You gave Mr. Belkin some very accurate dates. Now, give me some dates on the Cleveland III, when you got on or off. A. I joined the ship in the fit out. I fitted it out.

Mr. Belkin: I object to that.

Mr. Hinslea: It is cross examination.

Trial Examiner Leff: All right. Why is the precise date important even on cross examination?

Mr. Hinslea: I think I have a right to test this witness's testimony as to dates and other dates in line with the dates he has given Mr. Belkin. He has given us some pretty accurate dates.

Trial Examiner Leff: Now, you are back in 1937. All right. Go ahead.

Mr. Hinslea: It goes to the veracity of the witness, your Honor.

Trial Examiner Leff: Too remotely, I think.

Q. (By Mr. Hinslea): When did you join the Cleveland III? A. I joined the Cleveland III in the spring, the fit out, in the Port of Detroit.

Q. What month? A. The month of March.

Q. When did you get off? A. I got off here probably around the latter part of August.

Q. Do you have a discharge book with you? A. Not with me; no.

Q. Don't you always carry it with you? A. No; I don't, because I am not sailing right now.

Q. What boat were you on in '39? A. I left Cleveland in '39 and joined the Crescent City.

Q. I am asking you about '39? A. The Crescent City.

Q. Were you on there all season? A. No; she didn't sail all season.

Q. That was the only boat you were on in '39? A. That's right.

Q. You hadn't joined the N.M.U. yet; had you? A. No, sir.

Q. What boat were you on in '40? A. The Nicholson Transit Company, the Fellowcraft, Donnelly, and boats of that type.

Q. Had you joined the N.M.U. yet? A. No, sir.

Q. Wasn't the Nicholson being organized then? A. I helped to organize the Nicholson fleet.

Q. You joined the Union then; didn't you? A. In 1941.

Q. And did you stay in the Nicholson boats up until time you went on the Pittsburgh boats? A. That's right.

Q. Did you ever hold any paying position in the Union? A. Never did.

Q. Where did you join the steamer Filbert? A. At the ship yard in Detroit.

Q. When she was fitting up? A. That's right.

Q. When was that? A. That would be around the 22nd or something like that of March, 1944.

Q. How long had you been on the Nicholson boat before that? A. I sailed the Donnelly the season of—

Q. I am talking about '44 now. A. All winter. She sailed in coal trade, and I was on her then.

Q. She laid up in February? A. She laid up for the time being only. She would fit out and go out again.

Q. She laid up in February? A. I was on her then.

Q. When did you get back on her after she laid up in February? A. I got off her and joined the Filbert. I didn't get back on.

Q. You stayed there in February and March? A. Yes; laying up, or fitting out, or whatever you call it.

Q. Just to straighten this up, is it your testimony that you were on the Watt continuously—when did you first get on the Watt? A. I got on the Watt in the Port of Toledo.

Q. What day of the month? A. Wait until I get this straight now. I joined the Watt in January, or in December.

Q. And you stayed on her until March 22? A. I stayed on her until—yes.

Q. Went right from the Watt to the Filbert? A. I got the job on the Filbert before I quit the job on the Watt.

Q. But you did get off the Watt on the 22nd, and went right over to the Filbert? A. That's right.

Q. Now, how many of the crew were aboard the Filbert when you got on? A. I guess they had the full—

Q. I don't want you to guess. I want you to testify. If you don't know, say so. A. We completed the crew, the two firemen, the after end crew.

Q. Was the forward crew aboard? A. Some of the forward end crew.

Q. You can't answer that? A. No, sir.

Q. Were the cooks aboard? A. Yes, sir.

Q. Did you start organizing immediately? A. No; I didn't.

Q. Why not? A. Because I waited to find out who the people were on the ship. I didn't get acquainted with the boys.

Q. When did you start organizing? A. About 8 or 10 days after I joined the ship.

Q. About the first of April? A. No; that is when I started to sail. Probably about the 5th or 6th of April.

Q. Well, that would be more than 8 days; wouldn't it? A. It wasn't much more. I joined the 22nd, and about the 4th or 5th of April I started.

Q. In other words, you waited until the ship sailed before you started to organize? A. That's right.

Q. The full crew was aboard? A. That's right.

Q. Now, you say that the first altercation that you had with the Captain, or the Captain had with you was on April 20? A. Somewhere around there; yes.

Q. Well, you said April the 18th or 20th. Are you sure of that? A. Somewhere around that.

Q. Are you sure of that? A. It was somewhere around that. I am not sure.

Q. How do you know that? A. As far as I can figure out for the dates, we left Detroit and went to Calcite, and loaded stone for Gary, Indiana. On the way through the straits we got stuck in the ice several days. We got to Gary; back to Calcite, and reloaded stone for South Chicago. Stuck in the ice a couple or three more days. From South Chicago we went to Duluth and loaded ore, and went to the Port of Ashtabula.

Q. When did you leave Detroit? A. On the first day of April.

Q. The first day of April? A. That's right.

Q. You did all that in 18 days? A. That is about the time it took; yes.

Q. Now, how big is this Captain Brinker? A. He is quite a good sized man, middle age man.

Q. Is he also profane? A. He is very.

Q. Very profane man? A. That's right.

Q. Do you swear very much? A. I can do a little of it, too.

Q. Now, are these your expressions, or the Captain's expressions? A. They are the Captain's expressions.

Q. Do you ever use these words? A. Some of them; yes.

Q. Do you ever call anybody a bastard? A. Sometimes.

Q. Did you ever use the other word, that filthy word? A. That's right; I do at times.

Q. You learned that in the British Navy? A. I learned it generally.

Q. I mean, you used it in the British Navy? A. Well—

Q. Everything in the British Navy is fuckin' something. Now, what other expressions did he use, and did you use, profanity that wasn't common like fuckin' and bastard. Now what other word did both of you use? A. That is about all.

Q. Was that the scope of the profane vocabulary? A. Yes. Goddammit, and all that stuff.

Q. Well, you use Goddammit? A. Yes.

Q. What other words? A. That is all.

Q. So we have you and the Captain using the words Goddammit, and the other two words? A. That's right.

Q. And those were the only words that were used? A. I wouldn't say they were the only ones.

Q. Well, what other words were used? A. I won't say.

Q. Well, would you say those were the only words? A. I wouldn't say those were the only ones.

Q. Have you any other profane words in your vocabulary? A. Yes.

Q. Give me some of those. A. I refuse to do that.

Q. You quote the Captain, but you refuse to give them to me?

Trial Examiner Leff: He quoted these words that were used by the Captain. Do we need a complete dictionary on profanity here?

Mr. Rosenfeld: You are getting one.

Mr. Hinslea: This is the most unusual hearing—

Trial Examiner Leff: Let me ask you this: Under what circumstances do you use these words that you have described? Do you use them in everyday speech, or when you are angry?

The Witness: At times, yes.

Trial Examiner Leff: If you are not angry, do you use those words?

The Witness: Sometimes; yes.

Q. (By Mr. Hinslea): Now, Mr. Lee, it was at nine o'clock in the night, and you were in your bunk— A. That's right.

Q. —and the Captain came down in the fireman's room, that is, down below? A. That's right; on the lower fantail.

Q. And there are six firemen in the room? A. Yes.

Q. And he pulled your curtain back? A. That's right.

Q. Did he touch you at all—talk to you at all? A. No.

Q. Did he shake his fist in your face? A. He certainly did, repeatedly.

Q. How many times? A. Almost every time we had these conversations.

Q. Now, I am talking about nine p.m. on that fateful evening of April 18. A. No; I was on the lower bunk, and he was standing up. He couldn't get at my face.

Q. Did he shake his finger? A. Yes.

Q. Did he foam at the mouth? A. Well, he was working up to that.

Q. You mean he didn't get to foaming at the mouth until he got to the upper deck? A. On the upper deck; yes.

Q. Now, do you really mean that? A. I certainly do.

Q. Did the saliva really come out of his mouth? A. It was blowing in your face while he was yelling at you.

Q. There is no question about that? A. No question about it.

Q. You are sure about it? A. I am positive.

Q. And how far away—now, you are in the lower bunk, and this saliva was hitting you in the face? A. No; I didn't say that. I said that took place on deck.

Q. Oh, I see. Well, I will get to that later. Now just what did the Captain say to you when he was down in the fireman's room? A. He pulled the curtain back and shook his finger at me, and told me I was—the Captain said, "You fuckin' bastard, you are driving these men off the ship, you and your Goddamn Union."

Q. Now, anything else? A. And he stomped out of the room.

Q. Now, did you, Mr. Lee, ever make any attempt to drive anybody off the ship? A. I certainly didn't.

Q. It was your job, was it, to keep men on the ship? A. That's right. And I proved it to them that day.

Q. And you did everything you could to keep the men on the ship? A. That's right.

Q. And as an organizer you were interested in, first, converting the men, and then keeping them on the ship to vote? A. That's right.

Q. The Captain ought to have known that. A. I asked him why he accused me in such a form, after what I was trying to do for his crew. I repeatedly asked him that. He admitted that I was a good fireman, but my Goddamn principles were no good.

Q. The Captain said that? A. Yes.

Q. Was that at this first meeting? A. No; later on.

Q. Well, later on did the Captain realize that you were trying to keep the crew aboard? A. He did.

Q. And he admitted that to you? A. Yes, sir.

Q. Now, it is nothing unusual for a couple of firemen on a steamboat to get drunk; is it? A. That's right.

Q. That is not unusual? A. No; it is not unusual.

Q. And it is not unusual for a couple of firemen to get drunk and fight aboard ship? A. No.

Q. I don't want to confine it to firemen, because that is a very noble profession and occupation, but any sailor— A. That's right.

Q. It is a hard life, isn't it? A. It is tough.

Q. And you men are cooped up together for 24 hours a day; isn't that right? A. That's right.

Q. But sometimes you get tired of looking at the other fellow; don't you? A. You get ugly at times, I will say so.

Q. And getting stiff is a good way to blow off steam? A. Not for everybody.

Q. I mean for some folks? A. That's right.

Q. On board ship there is a lot of conversation; isn't there? A. There is.

Q. Now, you know what scuttle butt is; don't you? A. I have heard the expression.

Q. Don't you know what it is? A. I have heard the expression.

Q. Well, scuttle butt is just a lot of conversation and rumors? A. Stuff like that; yes.

Q. You have heard all sorts of arguments aboard a ship; haven't you? A. I certainly did.

Q. Everything from how to bring babies as to how have ball games? A. Yes.

Q. They occur in the mess room? A. Sometimes.

Q. In the fire hole? A. Yes.

Q. And in the engine room, and every place in the ship? A. Yes.

Q. Was that the only time that the Captain ever came down in the fireman's room, and took you to task? A. That's right.

Q. Now, how long did it take you to dress, Mr. Lee? Just put on your dungarees and go on above? A. Just put on a sweater.

Q. How was the weather that night? A. It was a little chilly.

Q. How long did you stay up on deck? A. Probably 45 minutes to an hour.

Q. And you had just dungarees and a sweater on? A. That's right. A heavy sweater.

Q. Do you know how cold it was that night? A. I wouldn't say. We were under the protection of the canopy over the galley. Just—

Q. It was out on the open deck, though? A. That's right.

Q. You had overhead protection from the rain, but that didn't help you from the weather? A. It helps.

Q. How does the overhead protect you from the temperature? A. Being close to the galley, and all that stuff where the heat is, it is generally pretty comfortable around there when the ship is at anchor, and close to the dock. That is a pretty hot place on the ship.

Mr. Belkin: I object to this line of questioning.

Mr. Hinslea: Don't we have an opportunity to check into the temperatures, and go into this witness's story?

Mr. Rosenfeld: He is not supposed to be a meteorological expert.

Trial Examiner Leff: Will you please address your remarks to the Examiner.

Mr. Hinslea: I am through with the subject.

Q. (By Mr. Hinslea): Where was this conversation? A. Outside the galley door.

Q. How far is it from the galley door to the rail? A. Oh, I'd say three feet or better, four feet.

Q. How many men were there? A. Right at that particular time in the conversation there was the Captain, the Chief Engineer, and the 1st and 2nd Assistants.

Q. What were their names? A. The Chief Engineer was—

Q. We have his name. What was the 1st and 2nd Assistants—

Mr. Belkin: We have his name, too.

A. Fred Turner was the 1st, and John—

Q. Who else was there? A. Back along towards the fire hole—entry into the fire hole the rest of the crew was congregated around there.

Q. How far is it from the fire hole door to the galley? A. I'd say about 20 feet or so.

Q. Who was back there? A. I just didn't see to name who was there, but there was lots of them around.

Q. Well, you can't name anybody? A. I can name the gangway watchman. His first name was Bill. Commando Bill we called him.

Q. He was at the ladder? A. He was at the ladder.

Q. How far is the ladder from the galley door? A. That is approximately 20 feet.

Q. Where were these drunken firemen? A. The drunken firemen had left the ship. They were paid off and gone.

Q. Was this conversation—were these officers gathered around the galley door when you came up there? A. They were talking to the Captain when I came up.

Q. They were talking to the Captain? A. Yes.

Q. Was he foaming at the mouth? A. He was stomping up and down the deck like a madman.

Q. Talking to these officers? A. That's right. Blowing his top.

Q. Now, tell us what you mean by "blowing his top"? A. Well, that is a nautical expression, too. Acting crazy. Waving your arms. Cussing and swearing. That is blowing your top. In general, going nutty.

Q. Now, did he seem dangerous? A. Well, he always seemed dangerous to me. I tried to keep at arm's length.

Q. You still rode the ship, though? A. I certainly did.

Q. Now, what was he saying to the engineers when you got up there? A. He was yelling something about driving the men off the ship; and the ship was going to have to sail shorthanded, and all this other stuff; that he couldn't get men.

Q. Did he mention your name? A. When I came up I asked him—

Q. I asked you what he said when you came up. Did he mention your name? A. No; he didn't mention my name then.

Q. Then you went in with the engineers? A. That's right.

Q. What did he say to you then? A. I asked him for an explanation of what happened down in the quarters. He repeated that I was driving the men off the ship.

Q. What else did he say? A. Right then I asked the 1st and 2nd Assistants how my conduct had been on the ship since I joined it; how my conduct was; if I had ever been late for a watch, or missed a watch, or came back to the ship intoxicated. Both of them—both the 1st and 2nd Assistants and the Chief said, "No." They were perfectly satisfied with my work, and my behavior.

Q. What did the Captain say? A. I asked the Captain if he heard that repeated. He said he did. I said, "You can't blame me for putting men off the ship, if that is the way you act on the ship."

Q. Did he call you names then? A. He continued with the cussing.

Q. What did he call you? A. Well, it was names like I just repeated.

Q. What? A. Bastard, and no good—Goddamned me, and just in general blowing his top.

Q. How many times did he call you a bastard? A. That went on repeatedly for an hour.

Q. How many times would you think he called you a bastard? A. I wouldn't say. Probably half a dozen times in the conversation.

Q. Did he use the other words a half dozen times? A. I wouldn't say he used them, but they were in the conversation like that.

Q. Now, this conversation took an hour. Was there anything else said, except how good a man you were? A. Yes; the general conversation was about the ship sailing short, and getting men aboard, and general activity around like that.

Q. Did these other men that you talked about, the crew, did they stand back by the boiler house door for the

whole hour? A. They were around there, changing off and on about—

Q. You don't know who they were? A. I know they were part of the crew, but I don't know just who they were.

Q. It was dark; wasn't it? A. It was dark.

Q. Were you angry at all, Mr. Lee? A. Well, I wasn't very well pleased by being accused of stuff that I wasn't guilty of.

Q. I don't blame you for not being pleased. But were you angry? A. Well, I wasn't real mad. But I wasn't taking it very good.

Q. Well, do you allow people, even Captains to call you those vile names continuously for an hour? A. Under the circumstances, you have got to take that stuff on a ship.

Q. Did you ever take it on the Nicholson boat? A. I did.

Q. That is part of the sailing game, isn't it, for—I mean, saying to a sailor: "Get your ass out of here." Or, "You bastard, what are you doing," to a sailor, is just like some Sunday School boy saying "Fudge"? A. That is not the story here. That is not the way these words were put. Every time he called me that, he meant what he said. It was said in a different light. Saying that stuff in a joking manner, and saying it as he said it to me are two different points.

Q. Wait a minute, Mr. Lee. Isn't it true that there are some types of men, officers, and there are types of oilers, and watchmen that when they give the other fellow an order, they put some profanity in it? It is done every day; isn't that right? A. I'd say that is right.

Q. Now, Mr. Lee, this exhibit, this speech from Congressman Bradley, you received that by mail; didn't you? A. No; I didn't.

Q. Well, now, what I am getting at is this: Isn't it a fact that someone in the office—one of the officers on watch, when you go by Detroit, usually go through the ship and distributes the mail; don't they? A. No; we get our mail at the Soo on that ship.

Q. You also get mail at Detroit? A. Sometimes; yes.

Q. You wouldn't dispute with me that this Bradley literature was not mailed to the boats at Detroit; would you? A. I couldn't say where it was mailed to, but we got it—

Q. Isn't it a practice—

Mr. Belkin: Let the man finish his answer.

A. (Continuing): We got it at the Soo, after leaving the Soo.

Q. Now, who distributes the mail at the Soo? A. The procedure on that ship is when you get your mail at the grub board, it is taken to the pilot house and sorted out. The after ends' mail is sent back to the Chief Engineer, who also sorts it out. You either go down in the engine room and collect it, or, if you are in the fire hole he hands it to you.

Q. Now, are you just as positive, Mr. Lee, that you didn't receive this Exhibit through the mail, as you are about other things?

Mr. Belkin: Objection.

Trial Examiner Leff: Sustained.

Q. (By Mr. Hinslea): You are positive that you didn't receive this Exhibit by mail? A. I am positive that the 3rd Mate came into the quarters and handed it to me while I was in the bunk.

Q. I am not denying that the 3rd Mate didn't. I am asking you. Are you positive that the 3rd Mate didn't hand you this in an envelope; that this came through the mail? A. I am positive.

Q. There is no question about that in your mind? A. No question.

Trial Examiner Leff: How did it come?

The Witness: That is the way it was handed to me, just like that.

Trial Examiner Leff: Was it folded?

The Witness: Just open. He handed them out like bills.

Q. (By Mr. Hinslea): Now, these conversations that you had three times a week with the Captain, they ran from April 18 to June 1? A. That is right.

Q. And did you go out on the after hatch every night? A. It was my turn off. I finished my work at five o'clock. That was my hour off. Suppertime was at a quarter to six, 15 minutes to six. I come up out of the fire hole, and be on the fidley or deck. The boys would come to eat, and the Captain would come back with them. They would always—

he would always pick an argument or some conversation with me then.

Q. Were you there every night, seven nights a week? A. That is the time I get off watch. Yes; up until that time.

Q. Were you there every time the Captain would go by? A. I would be around there either sitting inside or on the deck.

Q. Are you sure it was only three times a week that you had a conversation with the Captain? A. I wouldn't say. It might have been more. An average of three times a week.

Q. It might have been every night? Some weeks it might have been every night? A. I wouldn't say we had seven arguments in one week.

Q. Were you anxious to argue with the Captain? A. I was there to organize the ship. By explaining to the Captain his contradictory statements to me, the conversation was always loud enough so that the crew, who would be adjacent, standing outside the galley door, could hear it. They would get an explanation of the Union's policies through the Captain. I explained to him how he was the best organizer we had, because he would pick these arguments; and I would give him a thorough explanation. We talked loud enough always so the crew could hear it. Therefore, we were driving home the Union policy through the Captain. That was my idea.

Q. Then you were very deliberately waiting for the Captain to get into an argument, because you felt that what the Captain said was assisting you in your activities? A. I wasn't waiting for the Captain at no time.

Q. But what you say, the Captain was assisting you in your activities? A. Yes; I pointed it out.

Q. While you weren't looking for the arguments, you didn't object to them because you thought they would help you? A. I knew he would always pick on me; yes.

Q. You felt that his arguments to you were helping you organize? A. That's right.

Q. Now, how far is it from the after hatch back to the galley? A. Well, I'd say it is about 30 to 35 feet.

Q. And would these arguments between you and the Captain be loud enough so the men back of the galley door could hear it? A. That's right.

Q. Did you holler loud enough so they would hear it? A. That's right; yes.

Q. And you could egg the Captain up so he would talk loud? A. I didn't have to egg the Captain.

Q. But he would talk loud? A. You're damned right he did.

Q. So the two of you were shouting loud enough so the people back 35 feet could hear all the conversation? A. That's right.

Q. Now, you don't know who stood back there by the galley door at night; do you? A. You mean to eat supper there?

Q. Yes. A. Well, that was the crew coming back to eat. Yes; the two crews off watch.

Q. What side of the ship would this conversation take place on? A. On the port side, port side, aft.

Q. Now, the oiler and wheelsman and watchman don't hang around the galley door before the— A. No; they don't.

Q. —before the chow hammer rings? A. That's right.

Q. They go around the other side? A. They don't have to go around the other side.

Q. They eat in the dining room? A. That's right; in the dining room, aft.

Q. How far is the dining room from where you had this conversation? A. You would have to take a round-about way to get there. I'd say it would be about 75 or 80 feet.

Q. Would you say they heard you in the dining room? A. I wouldn't say they heard us—could hear inside the dining room.

Q. Could they hear outside the dining room? A. If they were in the fantail; yes.

Q. Now, why did you stop the conversations about the 1st of June?

Mr. Belkin: I object to that. He hasn't testified that he stopped the conversations.

Mr. Hinslea: He said the conversations went on three times a week until the 1st of June.

The Witness: That's right.

Trial Examiner Leff: I will sustain that objection.

Q. (By Mr. Hinslea): Did the conversations extend beyond the 1st of June? A. No.

Q. Why not? A. I don't know. The Captain seemed to cease right then.

Q. Did you continue to organize? A. I certainly did; yes.

Q. And, of course, you weren't discharged? A. I wasn't discharged; no.

Q. And you weren't threatened to be discharged? A. No, sir.

Q. As a matter of fact, the Chief Engineer protected you; didn't he? A. The Chief told me that he protected me; yes.

Q. He went so far as to say that if you got off he would get off? A. That is his words.

Q. He has been with the Pittsburgh Steamship Company a good many years? A. He tells me around 30.

Q. He, of course, was your immediate supervisor? A. That's right.

Q. If there was any discharging to do, he would do it? A. I don't know.

Q. You never heard of the Captain firing a fireman; did you? A. Oh, yes; I did, on ships.

Q. On Nicholson ships? A. On several ships.

Q. I don't mean fire them—he pays them off. But don't the engineers tell you to go up and get your money? A. That's right.

Q. I am not quibbling that the Captain pays you off. He gives you your money. But—you are in the engine department. Any discharging that is done is done by the engineers; isn't that right? A. I'd say the Captain is the master of the ship; and has the power to discharge anybody on the ship.

Q. He pays you off, but he doesn't take the prerogative of firing firemen or coal passers, or oilers? A. He has that power.

Q. He has that power, but he doesn't exercise it; does he? A. That is not for me to know.

Mr. Rosenfeld: Let me make an objection, please.

Trial Examiner Leff: What is your objection?

Mr. Rosenfeld: That Mr. Lee doesn't know if the Captain has the power to fire. It calls for a conclusion. It is hypothetical. I don't think it is a proper question.

Trial Examiner Leff: I will sustain the objection.

Just a moment. Mr. Witness, when an objection is made, you stop talking.

Mr. Rosenfeld: May I ask that Mr. Hinslea stop asking questions when an objection is made.

Trial Examiner Leff: If there is an unanswered question I will make my ruling.

Mr. Hinslea: Well, now, Mr. Examiner, I have practiced law for many years. I think it is—

Trial Examiner Leff: You are not being censored.

Mr. Hinslea: I just objected to the remarks of Mr. Rosenfeld. I just objected.

Trial Examiner Leff: All right. The record will so show.

Q. (By Mr. Hinslea): Now, all the conversations you had after April 18 were on deck? A. That's right.

Q. At the after hatch, forward, or the boiler house? A. In that vicinity; yes.

Q. Now, during those conversations did the Captain ever shake his finger in your face? A. He certainly did, repeatedly.

Q. How many times? A. That was general.

Q. Every time you had a conversation? A. Not every time; but he emphasized the fact, and put it down solid that—

Q. So that was just gestures in argument? A. The fist was coming up pretty close. I would get back out of the way.

Q. Was he threatening you? A. He was taking up a threatening attitude; yes.

Q. You say you know the conversations averaged three times a week. Now, how many times did he shake his fist in your face a week? A. I'd say he done it probably once or twice every three arguments.

Q. Once or twice out of every three arguments? A. Yes.

Q. Did you back away from him? A. I kept easing back so I wouldn't get it.

Q. How far did you have to walk to get away from him? A. Just so he wouldn't touch me, you know.

Q. I see. He never touched you? A. No; he never touched me.

Q. He never took ahold of you? A. No.

Q. Now, did you ever wave your arms? A. Well, I wouldn't say I had my hands in my pockets; no, sir.

Q. But you waved your arms, too? A. I was explaining the situation.

Q. Didn't you use your index finger to emphasize some point? A. It is below my dignity to use anything like that to an officer on a ship.

Q. I don't mean it in a threatening way. A. That is different. He was using it in a threatening attitude.

Q. You used it— A. Just as a gesture.

Q. I don't know if I asked you this, but I will just ask you again: During those conversations, he would use a lot of profanity? A. That's right.

Q. And you would use some, too? A. Yes.

Q. Did you ever use the word bastard while you were arguing with him? A. Not to him; no.

Q. Did you ever use the word? A. Not to him in the arguments; no.

Q. And you never used the other word while you were arguing? A. No, sir.

Q. Now, these arguments were all confined to the Captain; were they not? You had no arguments with the Engineer? A. I never had an argument—

Q. I mean, on the Union question? A. No, sir.

Q. And you had no arguments with the Mates on the Union question? A. No, sir.

Q. The Captain was the only one? A. That is correct,

Q. Now, this Pilot that you talk about, that is an official paper of the Union; is it not? A. That is correct.

Q. And there is a special section in it, is there not, covering the Great Lakes? A. That's right.

Q. And there are a lot of letters that are written in by a lot of members of the crews of the Great Lakes? A. That's right.

Q. And that is published for everybody? A. That is true. That's right.

Q. And you had no fault to find with the articles in the Pilot; did you? A. That's right; no.

Trial Examiner Leff: Does the N.M.U. publish a special edition for the Great Lakes?

The Witness: No.

Trial Examiner Leff: Is it the same publication that is circulated on the—

The Witness: On the coast; yes.

Mr. Rosenfeld: Mr. Examiner, for the record, the Pilot has a special Great Lakes section incorporated into the publication.

Trial Examiner Leff: Thank you.

Q. (By Mr. Hinslea): Now, when did the Captain make the statement—I don't know if it was you or your Union, was a bunch of nigger-loving bastards? A. That continued through several of the discussions.

Q. He said that more than once? A. Oh, yes.

Q. How many times? A. I wouldn't put it down to a certain number of times. It was more than once. It was several.

Q. You told me how many times you averaged a meeting a week with him arguing; you have told me how many times he shook his fist in your face. Now, how many times did he call the Union a bunch of nigger-loving bastards? A. Well, I put it down to, say, around four or five times through that period of arguments.

Q. Four or five times? A. Yes.

Q. Now, is it your testimony that you couldn't even get a cup of coffee on the steamer Filbert at midnight lunch? A. It is my testimony that we couldn't get a cup of coffee on the 2 o'clock watch for a certain period.

Q. What period was that? A. There was a period when there was absolutely nothing there.

Q. What period was that? A. The time, say, probably three or four weeks.

Q. Well, give me some dates. A. Well, that was after we started to sail. I'd say from the 1st of April until about the 23rd or 24th. Around there. A little bit better than three weeks.

Q. You had no midnight lunch? A. Nothing whatever going on watch at 2 o'clock in the morning.

Q. That included coffee, or anything? A. That included coffee, or anything. Let me continue, please. I will tell you the story. When the 1st Assistant would go up in the evening and steal the pot of coffee and take it into the engine room, bring it back into the galley and reheat it, we could get a cup of coffee going on watch.

Q. How long did that last? A. That lasted, oh, that would last probably about 8 or 10 days.

Q. That was from the 23rd of April for 8 or 10 days? A. That's right.

Q. During that time there was no midnight lunch? A. There was no midnight lunch, only that the 1st Assistant could supply.

Q. That he would steal? A. Yes.

Q. After the 10 days what happened? A. It seems the Mates started to kick because they couldn't get no night lunch. There was a change made in the galley. They left the galley door open for everybody to go in and lunch after, say, 7 o'clock. These young kids were like sea gulls. They would run in and eat the whole damn place out. When we came on watch at 2 o'clock there was nothing. So, they locked the galley door, and there was no lunching in between times unless you were going on watch. After that we got a lunch going on watch in the morning.

Q. What you are trying to say, then, Mr. Lee, was that there was actually lunch, but the other fellows ate it up before you got up there? A. They ate up there at 7 o'clock.

Q. You are not through with supper until 6 o'clock? A. That's right.

Q. And you say the boys had it all eaten at 7 o'clock? A. Yes; they cleaned the place.

Q. They ate at 6, and then went in at 7 and cleaned the place? A. That's right.

Q. And they drank all the coffee? A. That's right. I repeatedly heard the Captain—

Q. And there was nothing on—

Mr. Belkin: He said, "I repeatedly heard the Captain—"

A. (Continuing): I repeatedly heard the Captain bawl these kids out for that. He accused them of not only eating the lunch, but what they would not eat they would destroy.

Q. That was at 7 o'clock at night? A. That was from the time the lunch was left out until it was cleaned out. That would take probably an hour or so. They would have the whole place cleaned up.

Trial Examiner Leff: Will somebody tell me why it is important whether these fellows got lunch or didn't get lunch?

Mr. Hinslea: We have to get this man's whole story and complaints so we can meet them.

Trial Examiner Leff: Meet them for what purpose?

Mr. Hinslea: He testified that he never got a cup of coffee at 2 o'clock, and he told the Captain about it. The Captain called him a lot of filthy names.

The Witness: That's right.

Trial Examiner Leff: How is that relevant to the issues in this case?

Mr. Hinslea: I think we will make them relevant.

Trial Examiner Leff: They are either relevant or not relevant according to what the complaint alleges, and not according to how you make them.

Mr. Belkin: May I say something—

Mr. Hinslea: The inference is that this witness here is saying that the Captain, of all the men on the ship, picked him out. When he went to the Captain and complained about getting no coffee, the Captain did nothing but call him a lot of filthy names. I want to go into this lunch question. I want to prove there was coffee and lunch at 2 o'clock in the morning.

Mr. Belkin: May the Board's counsel be heard on this, please?

Trial Examiner Leff: Just a moment.

Suppose the Captain called him filthy names for demanding coffee. If you assume that to be true, what bearing has that got on this case?

Mr. Hinslea: Mr. Examiner, if this man, under oath, testifies that he never got any lunch or coffee at 2 o'clock in the morning, and it is proven that there was lunch available, doesn't that go to his veracity? Doesn't that go to—this man can't get on the stand, under oath, and testify without our probing—on the basis of our not probing into the things he is talking about.

Trial Examiner Leff: It might go to the credibility, but not a material point.

Mr. Belkin: I would like to say for the benefit of counsel, the record, and yourself, Mr. Examiner, that we are not introducing any allegation concerning the language used by the Captain; concerning working conditions on board the ship, such as the food question. It happened that during the course of the direct examination of the witness,

he testified that he had conversations with the Captain where these matters came up. The Board is not interested in that question. We are interested simply in matters relating to alleged unfair labor practices. I want to make it clear that the only statements pertinent to this record are those in which the Captain—and I don't stress the profanity used—are those in which the Captain said something concerning the Union. In other words, the rotary shipping list, the Jim Crow issue, anything about organization, and so forth.

Trial Examiner Leff: That is about all you consider material. You can use your own judgment. But I don't think it serves much purpose to labor immaterial points.

Mr. Ray: They were labored on direct examination.

Q. (By Mr. Hinslea): Mr. Lee, all the Captain said to you about rotary hiring system was that if he couldn't take his crew to another ship that he would be master of, he wouldn't be Captain; that is all he said about that? A. That's right.

Q. Now, did he actually say when you discussed overtime that if the men couldn't get their work done in 8 hours they are no fuckin' good, or did he say if they couldn't get their work done in 8 hours they were no good? A. He never used that expression talking about the men getting the work done.

Q. When you talked about overtime, over 8 hours, the Captain said: "If the men couldn't get the work done in 8 hours, they are no fuckin' good." You deny that? A. I never said that.

Q. What did he say? A. I said that the Captain said —let me see what he said about that. We were arguing about overtime. I told him—I explained to him how the Union could get overtime on 8 hours. He said the Union that could do that was no fuckin' good. 8 hours was a man's day's work. If he could get overtime in the 8 hours, then the Union was no fuckin' good; robbing the Company, and all this kind of stuff.

Q. Well, what do you mean overtime during the 8 hours? A. On a contract ship there are 7 specific jobs. If you do your 8 hours, you are paid overtime, for instance, if I am on watch in the fire hole, and they take the coal passer who is on watch with me, on a contract ship, into the en-

gine room to do work, he is paid overtime on that watch. I tried to explain that to the Captain. He told me if a Union could do that for a man, to collect overtime for them in their 8-hours work, the Union was no fuckin' good. They were just robbing the companies.

Q. Was that the answer you gave on direct examination, too? A. It was to that effect; yes.

Q. Now, if the Captain said to you that if the Union wins, they will hire a nigger and make him a partner to you, do you think he was kidding, or was he serious? A. He seemed to be serious.

Q. Are you sure? A. I am positive. At that time I told him right then—I said, "Captain," and I put my fingers this size (indicating) "that is going to make swell headlines for the Pilot: Captain C. J. Brinker Hires a Nigger to be the Scotchman's Partner." I told him I would turn it in to the Pilot, and blast him with that. I am sure he meant it when he said he would hire a nigger to be my partner.

Q. Do you think he could? A. That is what he said, himself. Before the contract is signed, when he has the power to hire and fire, he would hire a nigger, after he knew the Pittsburgh Steamship Company would organize, he would do that.

Q. I am not asking you what he knew. I am just asking what he said. Did he say—was he shaking his fist under your nose? A. You are damned right, he was. Putting it on heavy.

Q. Now, whatever Mr. Zyp said to the Chief Engineer, and whatever authority Mr. Zyp has, the Chief Engineer took your part and kept you right on that ship; didn't he? A. He said he did, to me.

Q. And he did? A. So he did.

Q. You didn't get off the ship until you felt like it? A. That's right.

Q. You got off on the 28th— A. No; I got off on the 8th of September.

Q. Why did you get off? A. To get my eyes tested, to get a rest.

Q. Of your own volition? A. That's right.

Q. And you rode with the Captain until the 8th of September? A. That's right. When I was ready to quit,

the Captain came back and wanted to know why I was quitting.

Q. He thought you were a good man? A. He certainly did. He admitted I was good, but my Goddamned principles were no good.

Q. Well, that is just a difference of opinion; isn't it? A. Well, it was put to me pretty solid.

Q. Did you shake hands when you left? A. Not with the Captain; no.

Q. But he didn't shake his fist then to your nose when you left; did he? A. I don't know if he was aboard the ship when I left.

Q. Isn't it a fact that he said he was sorry to see you go? A. He came back to the mess room when he heard I was going to quit.

Q. He told you he was sorry you were going to quit, and that you were a good fireman? A. He didn't say it like that. It was in these conversations in the meantime.

Q. Yes. But didn't he say he was sorry to see you go? A. That's right. He asked me if I was coming back. Apparently, he would rehire me if I wanted to be rehired at that time.

Q. He still knew you were an organizer? A. He certainly did.

Q. Did you change—you hadn't changed your organizing from the time he shook his fist until the 8th of September? A. That's right.

Q. And he knew that was your job? A. That's right. The only thing he hollered was that I was a paid organizer. He repeatedly hollered, "You are a paid organizer."

Q. How did he know that? A. That is what I tried to get out of him. He said he had connections. All that sort of stuff. He knew. He knew.

Q. Well, that was old scuttle butt? A. His brother-in-law sails another ship, and he is supposed to get the dope from him. He sails the Donner.

Q. He sounded like a cook with all that scuttle butt, with all those connections? A. He sounded like anything but a Captain and a gentleman.

Q. That incident on the fantail with the young porter, Conn, I have a note here that you told Conn about his rights. What did Conn say to you? Do you remember that conversation? A. You mean on the fantail?

Q. Yes. Do you remember that you testified the Captain came to you and told you that you had been talking to Conn, and you called Conn out? A. That's right.

Q. Now, what did you say to Conn? A. I asked Conn if I had explained the rotary shipping list to him. He said, "Yes." I said, "Well, tell the Captain just what I said."

Q. And did he tell the Captain? A. He told the Captain to the best of his ability, what I told him.

Q. What did you tell him? A. I asked him: "Are you sure that is what I told you?" The kid said, "Yes."

Q. What did you tell Conn? A I asked him to address his remarks to the Captain.

Mr. Belkin: I don't think the witness understands.

Q. (By Mr. Hinslea): What did you tell Conn when you talked to him? A. I explained the rotary shipping list; how you ship through the hall; you go up and get a shipping card; when it comes your turn you ship if you have the qualifications for that job.

Q. You told him if he laid up the boat he could go back in the spring? A. That's right.

Q. Did he repeat that to the Captain correctly? A. Yes; as best he could.

Q. Did Conn say anything more? A. No; the kid was too upset to say anything when the Captain jumped on him.

Q. The Captain took this 16-year old boy, and called him a fuckin' little bastard, and called him a fuckin' liar? A. Yes.

Q. Was he just a small boy? A. Yes.

Q. And the Captain is a big fellow? A. He is a brute; yes.

Mr. Hinslea: That is all.

Mr. Belkin: I have something for re-direct, Mr. Leff, if you please.

RE-DIRECT EXAMINATION.

Q. (By Mr. Belkin): Directing your attention, Mr. Lee, to the time when the 3rd Mate gave you what has been marked Board's Exhibit 4, and is entitled: "The Speech of Fred Bradley," you said he gave it to you personally?

(Thereupon the document above referred to was marked for identification Board's Exhibit 4.)

A. That's right.

Q. I think you also testified that he had a bundle of these pamphlets; is that true? A. Yes; he had several in his hand.

Q. How many do you think he had in his hand to the best of your recollection? A. His hand was something like this (indicating). I could see 12 or 14 in his hand.

Q. What did he do with those pamphlets while you were in his presence, and while he had them? A. He distributed them to the rest of the people in their bunks.

Q. How many people were in bunks in that room at that time? A. There are three.

Q. Now, you stated—

Mr. Hinslea: Could you ask who they were?

Mr. Belkin: Yes. Surely.

Q. (By Mr. Belkin): Do you recall who they were? A. Yes; there was my partner who was in the bunk, Pitts, John Pitts, and there was a young lad—I forget his name. He only—he went oiling after that. I don't just remember. But the watch was off anyway. There was one watch working, and the other four of us were in our bunks at the time. I remember Pitts, because he was my partner. He was in the bunk at that time.

Q. By "partner" you mean he worked with you? A. That's right. He was off watch with me and bunked at the same time

Q. Now, referring to your conversation with the Captain in which he tells you that he is sorry to see you go, or words to that effect, how long after the election did this occur? A. Well, they had the election on the ship—they started in the Pittsburgh fleet, as far as I recall, around the 6th of June. It was sometime later than that that we had our election in Two Harbors. That is where they voted on our ship. I continued in the service of the Company until the 8th of September. That is when this conversation took place.

Q. Did you have a full crew in the after end at the time you left the ship?

Mr. Hinslea: I object.

Trial Examiner Leff: What is the ground of your objection?

Mr. Hinslea: It is immaterial. What difference does it make whether you have a full crew?

Mr. Belkin: It certainly makes a difference in view of the Captain's saying that he didn't want Lee to go. It certainly has bearing on that statement. That statement was brought out by Mr. Hinslea, not by myself. That is why I was examining upon that question.

Trial Examiner Leff: All right. Go ahead.

Q. (By Mr. Belkin): Did you have a full crew? A. A full complement outside of my getting off the ship; yes.

Q. Now, you referred in your testimony on cross examination to a statement the Captain made, in which he, as I gathered you stated, said that his brother-in-law sailed aboard the Donner, and gave him information? A. That's right.

Q. Will you tell us more about—will you tell us exactly what the Captain said to you to the best of your recollection at that time? A. Well, at that time that conversation he called the Union—he said the Union was no good. They didn't have a contract on these Lakes. He knew that to be positive. I asked him where he got his information to that effect. I explained to him the different lines we had under contract. He said, "I got an in." He said, "My brother-in-law sails the Donner. That is one of the Bethlehem Fleet. She is under the 376 contract with the National Maritime Union." He said, "That is where I got this dope." I went to the Union Hall in South Chicago, and got a copy of all the contracts we have on these Lakes and brought them to the ship for the Captain to see. At that particular time, we had just got the result of the Midland Fleet election. I got the delegate in Port in South Chicago to write the election—

Mr. Hinslea: What has that to do with the Captain's brother-in-law?

Trial Examiner Leff: I don't know what it has to do with it.

Mr. Belkin: As a matter of fact, I agree with counsel that it has nothing to do with it, but since it came out in Mr. Hinslea's cross examination, I wanted to explore it.

Trial Examiner Leff: Well, let's not go off on every tangent that presents itself. Stick to the issues.

Mr. Belkin: Well, I wanted to discover if there was anything to it. The question was brought up by Mr. Hinslea. It is clear that it has no bearing. I am not pursuing it.

Trial Examiner Leff: Let's drop it.

Mr. Belkin: It is dropped. I have no further questions.

Trial Examiner Leff: Any further questions?

Mr. Hinslea: No.

Trial Examiner Leff: I want to get something clear.

EXAMINATION.

Q. (By Trial Examiner Leff): I want to get something clear. You had about three conversations a week with the Captain. That is apart from that incident when he came down to your bunk and pulled you out. Now, how did these conversations usually start? A. Well, before the men go to eat, around that time, they generally start drifting by and talk at the galley or the dining room where they respectively eat. They would congregate around the galley door, or around—if they would come out of the galley—if it was cold weather, they would stand in the fidley and hold conversations in there. We split the watch on that particular shift. Two of us handled it. I had it so I was off the last hour.

Q. How did your conversations with the Captain start? A. The Captain would come along and start after he got the Pilot, and would read it, he would come back and say: "I see in the Pilot"—he would start this argument. Naturally, I had to try to explain what was in the Pilot to him, because I read it too. He would say, "Did you see that article in the Pilot? Goddamn liars. Did you see this?" That is the way it would start. He would come back to eat. That is when that would take place.

Q. How often was the Pilot issued? A. Once a week. It is collectible in any Port on the Lakes. The Union Hall—any port where that ship goes into. I would go to the Hall and get these Pilots, or have somebody else bring them back to the ship for my own information, or some of the other boys. The Captain would always see that he got one. He asked me to give him a Pilot.

Q. All right. A. I would give it to him, and say, "Here is a table topic." I would make a joke of it, so he could read it; so he could see the score, and see what was

going on on other ships; and he could get educated, and wouldn't accuse us of these lies, and stuff like that.

Q. Well, did you or did you not start conversations with the Captain? A. No; it is not my place to start any arguments with any officers or organize any officer. My arguments and the educational program was directed to the unlicensed personnel.

Trial Examiner Leff: Any further questions?

Mr. Hinslea: Just one.

RE-CROSS EXAMINATION.

Q. (By Mr. Hinslea): All of these conversations you had with the Captain, the Captain started? A. I would say he did.

Mr. Hinslea: All right.

Mr. Belkin: That is all.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: We will have a five minute recess.

(A recess was had.)

HOWARD JOHN SHARTLE, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Trial Examiner Leff: Give your full name and address to the reporter, please?

The Witness: Howard John Shartle, S-h-a-r-t-l-e, 2765 Euclid Heights Boulevard, Cleveland, Ohio.

Q. (By Mr. Belkin): Have you ever been employed by the Pittsburgh Steamship Company, Mr. Shartle? A. Yes; I have.

Q. What was the term of your employment with them? A. From the 31st of March, 1944 to the 24th of April—23rd of April, 1944.

Q. What ship did you sail? A. The Irving S. Olds.

Q. Who was the Captain? A. John C. Murray.

Q. Who were the Mates? A. Chief Mate, First Mate, Frank Dobson, the Second Mate, his first name was Joe;

and the Third Mate's name was Frank. I don't remember their last names at this time.

Q. Will you tell us just how you secured employment with the Pittsburgh Steamship Company? A. Yes; I went down to the Rockefeller Building, down here. I went up, and a colored fellow who was the receptionist there, he gave me an application blank to fill out. I waited around after I filled it out. He sent me in to Mr. Zyp's office. Mr. Zyp interviewed me.

Q. Did you apply to Mr. Zyp? A. I applied about six days previous to that time.

Q. Six days before you shipped aboard the Olds? Is that right? A. Yes; that's right.

Trial Examiner Leff: Do you know what the first name of Mr. Zyp is?

The Witness: I don't know. I think it is Bernard.

Trial Examiner Leff: Do you know?

Mr. Belkin: I don't know.

Mr. Hinslea: It is John.

Q. (By Mr. Belkin): In your interview with Mr. Zyp, do you recall just what questions you were asked? A. Yes, he looked over my application, and he said—he saw that I had sailed on the Lakes previously. He said that was a good qualification. I had also sailed on the coast on Union ships. So he thought that I had enough experience, and he would let me know when anything did come in. I went down practically every day, or called, and I went down—

Q. When you called—pardon me for interrupting you. When you called, to whom did you speak? A. To Mr. Zyp.

Q. Go on and tell us? A. It was during the fit-out season at that time. They were getting crews aboard. I went down to see him on the 30th or 31st, one of the two, I saw Mr. Zyp. He said, "Wait around." Finally Captain Murray came in and talked to Mr. Zyp. Then they called me in and interviewed me, and looked over my experience, and so forth, and told me to be there for the morning of the 31st.

Q. Who told you? A. Captain Murray.

Q. Then what did you do? A. Then I went out to the ship, and got my quarters and so forth, and started to work the next morning.

Q. Did the men aboard the ship ever discuss Mr. Zyp and his duties? A. They just said he was the big shot up at the company. That is about all.

Q. Did they describe, or in any way describe his position with the company, or what they thought his position was? A. Yes; they said he was personnel manager in the employment.

Mr. Hinslea: May I inquire, Mr. Examiner, is that confined to the conversation among the unlicensed people?

Trial Examiner Leff: With whom did you have these conversations?

A. With members of the unlicensed personnel; yes.

Q. (By Mr. Belkin): What was your job aboard ship? A. Watchman.

Q. What were your qualifications for that job? A. I was an able seaman.

Q. Are you so certified by the Government, the Coast Guard? A. Yes; I am.

Q. Since when? A. Since the 27th of July, of 1943.

Q. When you boarded the ship, were you a member of this N.M.U.? A. Yes; I was.

Q. Did you engage in an organizational campaign for that Union aboard the Olds? A. Yes; I did.

Q. Just what were your activities? A. Well, I tried to organize the unorganized aboard the ship. I passed out Union literature. I handed Pilots out to the members of the crew and to the Mates and Engineers aboard the ship; and I also told them the benefits of a Union. Many of them agreed. Some disagreed.

Q. Did you at any time discuss the Union with the Captain? A. Well, yes; I did. I was—

Q. Will you tell us when you did that? A. Yes. We were just entering the Detroit River, outside of Lake Erie. I was on the forecastle head standing look out, as you do just before you hit the River.

Q. Well, that is where, Mr. Shartle? I would like to know when, if you can tell us. A. It was about a week previous to the time I got off. It was the trip before I got off. Going right up. The same ship I got off in Conneaut. It was about six days previous to the 23rd.

Q. On or about the 17th? A. Yes.

Q. In 1944? A. Yes.

Q. Who, if anyone else is present in the wheelhouse? A. The first mate was up there; and John Mizener, he was a wheelsman; he was up there, and the Captain. But he said when I was down in the forecastle head, he said, "Come up here and let's see how you salt water men steer on the rivers." So I went up and took the wheel from Mizener. He stood by. Mizener was at the wheel at the time. The Captain said to me, "Are there many niggers out on salt water?" I said, "No; not too many." He said, "You know, if the Union gets in here on the Lakes, you are going to be eating and sleeping with the niggers." I said, "Well, most of the negroes are in the Stewards Department." From there he went on about steering the ship up the river, guiding on different ranges and buoys, and so forth. I stayed at the wheel for about an hour. Finally, I had to go down and check on the deckwatch, to make sure the watch was called at the time; because the deckwatch had no clock and he was down below.

Q. Did you at any time talk to any of the licensed personnel, the after gang concerning the Union? A. Yes; I did.

Q. With whom did you speak? A. They had a 1st—they had the Chief Engineer, the first assistant, the second assistant, and the third assistant, and also an engineer on there who is an electrician. I talked to all but the Chief about the Union; and the first assistant told me that the Chief did not have any use for Unions at all.

Mr. Hinslea: I object now as to what the first assistant told this man what the Chief believed. That is hearsay.

Trial Examiner Leff: Is the first assistant a supervisor?

Mr. Belkin: Yes; he is.

Trial Examiner Leff: Is that conceded? Is the first assistant a member of the licensed personnel?

Mr. Hinslea: Yes.

Trial Examiner Leff: I will overrule the objection.

Mr. Hinslea: Exception.

Q. Most of the engineers, the first and second and third, and the electrician engineer, they were all in favor of the Union. They read the Pilot. They told me that I better watch my step around the ship.

Q. (By Mr. Belkin): Just who told you that you better watch your step around the ship? A. This electrician.

Q. What was his name? A. I don't know his name. I don't remember it. I did not know it at the time.

Q. Was anyone else present when he said that to you? A. No; I was back in the forecastle there.

Q. You were in his forecastle, and no one else was present? A. No.

Q. Can you tell us just when that conversation took place? A. Yes; it was after the time that I had talked to the Captain coming down. It was about the 20th.

Q. Of what month? A. Of April.

Q. Just three days before your discharge? A. Yes.

Q. And just what, if anything, did this assistant say to you, to the best of your recollection? A. He said I better watch my step, because they don't want Unions in here on the Lakes.

Q. Did you say anything to him? A. I said, "Well, who had I better watch out for?" He said, "You better watch out for the Steward and the Captain." Because, the Steward had been sailing with the Captain for quite a number of years. They were buddies. He told the Captain everything that went on aboard the ship.

Q. Can you tell us the circumstances surrounding your leaving the ship, Mr. Shartle? A. Yes; it was a Sunday afternoon about 1:30. I was in my forecastle talking to my watch partner. One of the deckhands knocked on the door, and said, "The Mate wants you." So I went down to the Mate's room. He said, "I am making out your separation report, Shartle." I said, "What do you mean, you are making out my separation report?" He said, "Well, I am making it out." I said, "Well, I am not getting off. I have no intention of getting off." He said, "Yes, I am firing you." I said, "Why?" He said, "You are incompetent." I said, "Mr. Mate, I am not incompetent." He said, "Well, I say you are incompetent; and I have to fire you." So he said, "Come back in about 10 minutes and I will have your discharge and everything ready, and money." I went back to my forecastle, and saw my watch partner, John Vogel, and several other members of the crew, Charles O'Conner, John Mizener, Claude Polly—

Mr. Hinslea: Wait a minute.

Mr. Belkin: I think these interruptions are unnecessary. As soon as the witness has finished his statement, if Mr. Hinslea hasn't obtained it, I am quite willing to wait and let the reporter read it back.

Trial Examiner Belkin: I agree with you.

Mr. Belkin: Will you go on, please.

A. (Continued): I saw deckhands and the deckwatches, firemen, and several assistants, and told them I was being fired for being incompetent. None of them thought I was incompetent at all.

Mr. Hinslea: I object to what they thought.

Q. (By Mr. Belkin): Will you please tell us what they said?

Trial Examiner Leff: Strike out what they thought. Go on.

Q. (By Mr. Belkin): What did they say to you? A. They said I was not incompetent.

Q. Did you speak to them together or individually? A. I spoke to them individually.

Q. Now, which one of these men did you speak to first? A. Well, I went into John, my watch partner, and I told him first.

Q. I am referring to the assistants. A. Oh, the assistants—

Q. Or the Mates, or whoever you spoke to? A. Well, the first one—

Trial Examiner Leff: What member of the licensed personnel?

The Witness: I talked to the engineers, the assistants, and told them about it.

Q. (By Mr. Belkin): Which of the engineers did you speak to? A. I talked to the Second and Third, and the electrician.

Q. All right. Did you speak to the Second Assistant first? A. I spoke to the electrician first.

Q. All right. Let's begin with the electrician. You spoke to the electrician. What was his name again? A. I don't remember his name.

Q. You don't recall his name? A. No.

Q. What, if anything did you say to him? A. I said, "They are firing me for incompetency." I said, "I don't

see how they can do that." He said, "It must be for your Union activities."

Q. Was anyone else present at the time? A. No; there wasn't. I was back in his quarters.

Q. Where did you speak to this man? A. I spoke to him in his quarters.

Q. To whom did you speak next? A. I saw the Second Mate out on deck, and I told him.

Q. Is this the Second Mate or Second Assistant? A. The Second Assistant.

Q. Was anyone else present at the time out there on the deck? A. Yes; there was a couple of Firemen.

Q. Do you remember their names? A. No; I don't, off hand.

Q. What, if anything, did you say to the Second Assistant, and what, if anything, did he say to you? A. He said, "It's too bad."

Q. Did you begin the conversation, or did he? A. I started it. I told him.

Q. What did you say to him? A. I said, "I am being fired for incompetency." He said, "That is too bad." He said, "You should have watched your step."

Q. Did he at that time say that you were incompetent? A. No; he didn't say I was incompetent.

Q. Then you testified you spoke to the Third Assistant? A. Yes; I talked to him, and told him—

Q. Where did you speak to him? A. I spoke to him right around the galley door.

Q. Was anyone else present at the time? A. No; everybody was getting ready to go ashore.

Q. What if anything did you say to him? A. I told him I was also being fired for incompetency.

Q. What did he say to you? A. That he was sorry I was leaving the ship. He said that he was sorry that I am leaving. He would like to see me stay on; and that I was probably being fired for Union activities.

Q. What did you do thereafter? A. I then went back to see the Mate, Mr. Dobson. He gave me my discharge, and my money. I said to Mr. Dobson—I said, "I don't believe you are firing me for incompetency, because most of the members of the crew have stated that I am not incompetent." I said, "It is probably on behalf of the Skipper that you are firing me." He said, "No; that is my

own opinion, and I am firing you because you are incompetent." So, I went up to see the Captain. I told him I was going up there, up to Murray. I asked the Captain why—

Q. Where did you see the Captain? A. In the wheelhouse.

Q. Was anyone else present? A. Yes; we were coming in to Conneaut. They gave me within an hour and a half to get—

Q. Was anyone else present in the wheelhouse? A. Yes; the Mate was, and the wheelsman, Charles O'Conner, was up there.

Q. Which Mate was present? A. The Second Mate, Joe.

Q. What if anything did you say to the Captain there, and what did he say to you? A. Why, I asked the Captain why he was having me fired. He said, "I am not having you fired." I said, "Well, who is?" He said, "The Chief Mate is." I said, "Well, why?" He said, "You aren't competent." I said, "I am incompetent? No; I am not." I said, "You know that." He said, "Well, the Chief Mate says you are incompetent and I go by what he says." So, I told the Captain, "You are firing me for my Union activities, and you know that is the reason; but you won't admit it." He said, "It is no such reason." I said, "I have my A. B. Ticket, and I got it from the Coast Guard. That proves I was competent when I got the ticket. The only reason, just reason that you can fire me is for my Union activities." Well, the conversation got hot. He raised his voice. I kept on that point that he was firing me for my Union activities; and he kept denying it. He said, "Well, get to hell out of the wheelhouse now. I am busy." So, I walked out of the wheelhouse and went down below. I packed my gear. We finally docked in Conneaut. The crew members started piling off. We were going to unload very fast. I had to wait for my laundry which was over at that—the laundry right on the grounds, the Conneaut War Yard. They bring it over in a little boat to the ship. So, I had to wait while the Captain went ashore, and the Steward. So, I had to get my laundry and pay the Steward. I waited around the ship, and I saw the Chief Mate, Mr. Dobson. I said, "Mr. Dobson, tell me the truth. Am I really incompetent?"

Q. (By Mr. Belkin): Now, just a minute, Mr. Shartle. Just where are you talking to Mr. Dobson? A. I am talking to him on the foredeck.

Q. Was anybody else present? A. No; we were standing around the rail.

Q. Continue telling us what was said. A. I asked him if I was incompetent. Mr. Dobson said, "Well, when you are a Mate you have to do certain things that you don't always want to do. This year, the following season, I am supposed to get a Master's job on one of these ships." He said, "If I ever do get a job, I would like to have you sail with me." Then, when I saw the Second Mate—I hadn't done too much work with him. I had done a little during fit-out. I asked him if I was incompetent. He said, "No," as far as he was concerned I had done my job. So, I went to the Third Mate who happened to be the Mate whose watch I was on. After I asked him if I was incompetent he said he had no reason to think I was incompetent. I done all my jobs that I was supposed to do on his watch. He gave me the work to do, and I did it. He said that I wasn't incompetent. But it wasn't his cause for having me fired. He had nothing to do with it.

Q. Now Mr. Shartle, were you at any time criticized by any of the licensed officers of the ship for not performing your duties? A. No. No. Never.

Q. Had you been given any warning of incompetency previous to this day when the Mate called you and told you that he was about to discharge you? A. No.

Q. How long before the ship docked were you notified of your discharge? A. It was about an hour and a half. It was about 1:30, and the ship docked at 3:00.

Q. And you had been given no previous warning? A. No. No. There was scuttle—excuse me. There was scuttle butt around the ship.

Mr. Hinslea: Well, I object to that, now.

A. (Continuing): Previous to this time.

Trial Examiner Leff: By the way, there is no question pending.

Mr. Belkin: I am not objecting to the exclusion of the statement "scuttle butt."

Trial Examiner Leff: Wait a minute. The last remark of the witness beginning with the words "There was scuttle butt around the ship," will be stricken.

Mr. Belkin: Mr. Shartle, what is the regular practice on board the Great Lakes, in your experience and aboard Great Lakes ships in your experience as to the number of A.B.'s to be maintained aboard the ship?

Mr. Hinslea: Now, wait a minute. I object, your Honor, until he is properly qualified.

Mr. Belkin: I said, "according to your experience."

Trial Examiner Leff: Experience where?

Mr. Belkin: All right. We will qualify him.

Q. (By Mr. Belkin): How long have you been sailing the Great Lakes, Mr. Shartle? A. I sailed for two seasons.

Q. Beginning when? A. '43.

Q. What ship did you sail?

Trial Examiner Leff: Beginning when?

The Witness: '43.

Q. (By Mr. Belkin) What ship did you sail? A. The Angeline and the Manistique, Cleveland Cliffs.

Q. On the basis of your experience on those ships, what was the normal regular complement of A.B.'s carried? A. Well, there were eight.

Q. How many A.B.'s were there aboard the Irving S. Olds while you were serving on it? A. Seven.

Q. Do you happen to know how many A.B.'s were on board that ship after you left? A. Yes; six.

Q. You testified that you were a deckwatch? A. No; watchman.

Q. A watchman. I beg your pardon. What are the duties of a watchman aboard a ship? A. Well, the duties of the watchman is, more or less, when he is on watch like a boatswain on salt water, he tells the deckwatch and the deckhands what to do. He is supposed to supervise them and work along with them.

Q. Can you tell us whether or not it is true, generally, an A. B. performs that job? A. Yes.

Q. Are there occasions when an ordinary seaman fills the job? A. Well, I guess there were occasions after I left the Olds.

Q. Is that normal practice?

Mr. Hinslea: I move that be stricken, what he guesses.

Trial Examiner Leff: The motion is granted.

The Witness: Well, I know they were.

Trial Examiner Leff: Just a minute, there is no question pending.

Go ahead.

Q. (By Mr. Belkin): To your knowledge—do you know who took your place aboard the Olds after you left? A. Yes; I do.

Q. Do you know whether he was an A. B. or ordinary seaman? A. Yes; I do.

Q. Who was he? A. Jack Cole.

Q. What was he? A. He was an ordinary seaman.

Q. Was he promoted to your position from a previous job on board that ship, or did he come from shore?

Mr. Hinslea: Mr. Examiner, I ask that this witness be interrogated how he knows all this after he left the ship? It is puzzling me.

Trial Examiner Leff: Well, yes.

Mr. Belkin: We will bring it out.

(The last question was read.)

Q. (By Mr. Belkin): Will you answer that, please?

A. Yes; he was promoted from a previous job aboard the ship. He was a deckwatch.

Q. How do you happen to know that he took your position? A. Well, I told you I hadn't received my laundry as yet from the boat. When I was still waiting for it, when the Captain and Mr. Zyp came aboard, they wanted John Mizener—after a conference, the Chief Mate went up there also. The Chief Mate came down, and he said, "Cole, you are now watchman." Another fellow came aboard. He was an ordinary seaman, because I asked him. He told me, and he showed me his papers to show me if he was an ordinary. He went on as deckwatch. He replaced Cole.

Q. That is this fellow to whom you have just referred—did this fellow to whom you have just referred come on board ship from the shore while you were still aboard, or did you meet him on shore? A. Do you mean the seaman or Mr. Zyp?

Q. I mean the seaman. A. The seaman came from shore, aboard.

Q. And you talked to him on board ship? A. Yes; I did.

Q. Do you happen to know what his name was? A. No; I don't. If I saw him I could identify him.

Q. Now, Mr. Shartle, while you were on board ship and in your capacity as organizer for the N.M.U., do you distribute literature for the N.M.U.? A. Yes; I did.

Q. What did you distribute? A. I distributed the Pilot, and the Union pamphlets that were out at the time, Post-War Security, and so forth, what the N.M.U. does for Great Lakes seamen. It is a booklet put out by the Union describing all the benefits of the Union, and what a good contract will do for a seaman.

Trial Examiner Leff: Were you the ship's organizer?

The Witness: Yes; I was.

Q. (By Mr. Belkin): To whom did you distribute these pamphlets? A. I distributed them to the members of the unlicensed personnel. I also gave one to the Mate, the Second and Third Mate. They roomed together. They read it. I gave Pilots to the Mates and engineers. I said that previously.

Q. In other words, you distributed Union literature to the licensed personnel, as well as the unlicensed; is that it? A. That's right. That's right.

Q. When did you begin your distribution of that literature to the best of your recollection? A. Well, distributed it about three days after I got aboard the ship. As soon as I got up to the place where they distributed them in Lorain. One of the Cafes had a bunch of Pilots. It was right near the steel mills where we were fitting out. I went there and brought back a bundle, and left some on the recreation tables, also.

Q. Now, Mr. Shartle, did you see the pamphlet: "N.M.U. Fights Jim Crow," aboard the ship? A. Yes; I did.

Q. Did you bring them aboard the ship? A. No; I did not.

Q. To your knowledge, did any member of the N.M.U. bring them aboard the ship? A. No; they didn't.

Q. Where did you see these pamphlets? A. I saw them in the forward end recreation room, and the deck recreation room, and also in the engine recreation room, which they have.

Q. Now, going back to your discharge, I don't recall whether you told us in what Port you were dismissed? What was that? A. The Port of Conneaut, Ohio.

Q. That was on April 23, 1944? A. Yes; it was.

Q. What did you do thereafter? By that, I mean more specifically, did you go back to the company at any time? A. Yes; after I went to see the Conneaut agent, he told me to go back to Cleveland. I saw the Cleveland agent, and he stated the reasons, and so forth. Then I started looking for another job. I went down to Pittsburgh—

Q. Just a minute. Do you remember who the Conneaut agent was? A. Yes; Charles Moore.

Trial Examiner Leff: Agent for whom?

The Witness: For the N.M.U.

Q. (By Mr. Belkin): Now, continue to tell us what you did. A. Well, then, I went down to the Pittsburgh Steamship Company, over here.

Q. Do you recall just when you went back to the Pittsburgh Steamship Company? A. Let's see. I got to Cleveland on Tuesday, and I went up to the company on Tuesday and asked for reemployment.

Trial Examiner Leff: The same day?

The Witness: No; I got off on Sunday. It took me a while to get a train.

Mr. Belkin: This is April 25th.

Trial Examiner Leff: Oh, I see.

Q. (By Mr. Belkin): Is it not, Mr. Shartle? A. That's right.

Q. What happened at the offices of the company when you went there for employment? A. Well, I saw Mr. Zyp. Mr. Zyp said he was awfully sorry to hear that I was fired. I said, "Do you have anything at the present time that I can get on as a watchman or deckwatch?" He said, "No; there isn't anything in now." I said, "Well, do you think you will have anything in?" He said, "I don't know. Things are pretty slow around here. Not many men are getting off." So, I—

Q. Was this at the height of the shipping season? A. Yes; it is. It is just before—it is in July—

Mr. Hinslea: Well, now, I object. I don't know if this man is qualified to—

Trial Examiner Leff: What do you mean by the height of the shipping season? You mean the period when they are hiring the most men or the period when most people are sailing?

Mr. Belkin: I am willing to withdraw the question.

Trial Examiner Leff: All right.

Q. (By Mr. Belkin): Will you continue? I seem to have interrupted your statement.

Trial Examiner Leff: What else was said?

A. (Continuing): Well, I went home and came back the next day, and the next day, and then called up. Nothing doing. I called the company. I kept in touch with them all the time.

Q. (By Mr. Belkin): When you called, with whom did you speak? A. I talked to Mr. Zyp. If he wasn't in, I talked to his secretary. But he was usually in most of the time. I kept going back there, and finally he said, "Why don't you try some other company, or the Lake Carriers?" So, I went down to the Lake Carriers after attempting to get reemployment at the Pittsburgh. They had nothing at the time. I finally went over to Cleveland Cliffs and I got a job right off the bat there. After waiting about 12 days or 14 without employment. I got on the 5th of May on the same plane as a watchman and I got off there—I got off on my own accord. I never had any complaints as to my being incompetent or competent. I did my job, and I was well liked on that ship.

Q. Well, now, Mr. Shartle, did you after your service on board the Champlain, did you ever apply to the Pittsburgh Steamship for a job aboard their ship? A. No; I didn't.

Mr. Belkin: You may cross examine.

Trial Examiner Leff: We will recess until 2:00.

(At 12:30 P.M., a recess was taken until 2:00 P.M.)

AFTER RECESS.

(Whereupon, the hearing was resumed, pursuant to the recess, at 2:00 o'clock, p.m.)

Trial Examiner Leff: The hearing is in order.

CROSS EXAMINATION.

Q. (By Mr. Hinslea): Mr. Shartle, did you volunteer to go to the Pittsburgh Steamship Company in the spring of 1944 to be an organizer in one of their ships? A. Yes; I did.

Q. Now, what has been your sailing experience? A. I have sailed on the Great Lakes the previous year, and then I went out—

Q. Now, just tell me what boats and how long you were on them. A. I was on the Angeline in '43, and—

Q. Do you remember the date you went on her? A. April 15. I got off there the 10th of June.

Q. Now, what capacity did you serve on the Angeline? A. Deck watch, ordinary.

Q. You were an ordinary seaman; were you not? A. Right.

Q. How long did you have to serve before you could become an able bodied seaman in 1943? A. It was three months at that time.

Q. Are you sure of that? A. Yes.

Q. Absolutely? A. Positive.

Q. Now, so you are on the Angeline as an ordinary seaman or deckhand from April 15 to June 10; is that right? A. Yes.

Q. Then what other ships were you on? A. The Munising.

Q. When did you get on the Munising? A. I got on there the 20th of June. I got off there the 22nd of July.

Q. What was your job on the Munising? A. I was deckhand.

Q. You didn't have your A.B. certificate at that time; did you? A. No; I didn't.

Q. When did you get your A.B. certificate? A. After I got off there on the 27th.

Q. After you had served from the 15th of April to the 10th of June on one ship, and from the 20th of June to the 22nd of July on the other, you went up to the Coast Guard in Cleveland and obtained your A.B. certificate, is that it? A. That's right.

Q. And that was your sailing experience; was it not? A. At that time I had three months at Hoffman Island, which was included as sea time.

Q. That was shore training, as an apprentice seaman; was it not? A. Yes; it was Hoffman Island.

Trial Examiner Leff: Well, what is Hoffman Island?

The Witness: It is a Government training school, which they considered at that time as sea time for your training. It is part of the Maritime Service.

Q. (By Mr. Hinslea): When you made your application for an A.B. certificate at the United States Coast Guard, you had to give them your service; did you not? A. Yes; I did.

Q. And what service did you give them? A. I gave them all of that service that I had previously, including the maritime service.

Q. Now, while you were on the Angeline, or Munising, did you learn to steer the ship? A. I steered on the Angeline.

Q. How many times did you steer on the Angeline? A. Well, darn near every day, just about.

Q. Well, that doesn't mean much. Do you mean to say from the 15th of April to the 10th of June you steered every day? A. Yes; at night, yes.

Q. Whether the boat was in the rivers or out on the lake? A. Once in awhile in the rivers, not much.

Q. Well, now, how many times did you steer in the rivers on the Angeline? A. Oh, about three or four.

Q. And how long did you steer on the Angeline in the rivers? A. About an hour.

Q. Each time? A. Yes; just about.

Trial Examiner Leff: I don't want to interrupt you, but I think it might be easier for me to follow your cross examination if I know exactly what a watchman is supposed to do on board ship. I wonder whether you would mind if I asked the witness at this point. Of course, you can examine him on that yourself later on, or you can examine any other witnesses.

EXAMINATION.

Q. (By Trial Examiner Leff): You were a watchman during 1944 on a Pittsburgh vessel; weren't you? A. Yes.

Q. What were your duties as a watchman? Just describe them. A. Well, my duties were, as I said, more like a boatswain on salt water.

Q. I don't know what a boatswain does. A. Well, the boatswain directs the fellows on deck, the deck watch and the deck hands. He gets the orders from the Mate on his watch, and he tells them what to do, like, if it is sooging the after cabins, or scrubbing, or splicing, or anything in that line to be done on the ship, he does it. If they are in the rivers, or in fog, and at night, the lookout is supposed to be as far forward on the ship as possible to tell where there is fog signals—

Q. Does the watchman stand in the cabins at that point? A. Yes; in that particular spot, they stand on the forecastle head. They are looking out during all the time they are in the rivers.

Q. As a lookout, what are you supposed to do? A. I am supposed to report the—report if the ships blows one blast, she is coming past us. I call up to the wheel house and tell the Captain that "The ship blew one, sir." Then he repeats it, and they know how to steer.

Q. As a watchman, are you required to steer a vessel at any time? A. No; I am not on these ships. On salt water you sail as A.B., and you steer for two hours, and you lookout for two hours, in the war zones, right now. But in the daytime, peacetime, you work on deck with the boatswain.

Q. And on the Great Lakes does the watchman ever steer the vessel? A. No.

Q. What else does the watchman do? A. The watchman has a task to do like cleaning up different—keeping his own room clean, and the hallways, the deck watch is supposed to do that, and supposed to see that he does that. The Mates, they usually have a job for him to do.

Q. How many deck hands are there on a watch? A. Well, during the daytime they usually work—well, on this ship they had three deck hands and a deck watch. In the daytime they would work with me. If they were in port they would be shifting lines and cables, and so forth under the Mate's jurisdiction.

Q. Does a watchman do the same work as a deck hand? A. Yes; he works along with them.

Trial Examiner Leff: Will you proceed.

CROSS EXAMINATION (Continued).

Q. (By Mr. Hinslea): But he supervises the deck hands; doesn't he? A. That's right.

Q. And he is supposed to know more than the deck hands? A. That's right.

Q. Now, do you remember, Mr. Shartle, of the two or three times that you wheeled the Angeline, what river, part of what river you wheeled in for an hour?

Trial Examiner Leff: You are talking about 1943 now?

Mr. Hinslea: Yes.

A. Well, it was in the daytime. I don't know the hour.

Q. (By Mr. Hinslea): What part of the—what river, and what part of the river? A. Going through the—the lower lakes, around St. Clair River, and a little of the Detroit, where it is wide there.

Q. Well, what river were you in, Detroit or St. Clair? A. Well, a little in both.

Mr. Belkin: Mr. Examiner—

Trial Examiner Leff: Is wheeling the same as steering?

Mr. Hinslea: Yes.

The Witness: If I may go on—

Mr. Belkin: It seems to me that entire line of questioning is immaterial and irrelevant.

Trial Examiner Leff: I don't know whether it is or not, unless I can first find out why the Respondent contends that they discharged Shartle.

Does the Respondent contend that his incompetency was in connection in any way to the wheeling or steering of the boat?

Mr. Hinslea: You remember he testified on direct that the second trip the Captain called him up to wheel in the rivers.

Mr. Rosenfeld: Now, Mr. Examiner, he did not say the Captain called him up to wheel in the river. What he said was that the Captain called him up and said, "I would like to see how you salt water men steer." He didn't say anything about rivers at that time.

Mr. Hinslea: You are just quibbling. He testified the ship was just entering the Detroit River.

Isn't that a fact?

The Witness: Yes.

Mr. Hinslea: I just want to go into the experience he as had in wheeling in the rivers. On the lakes, the most ifficult part of the wheelsman's job is wheeling in the ver, the St. Clair, the Detroit and Soo Rivers.

Trial Examiner Leff: He was not a wheelsman.

Mr. Hinslea: They relieve these wheelsmen. They ave to be competent enough to relieve the wheelsman. want to go into his competency.

Trial Examiner Leff: Do you, as a watchman, relieve e wheelsman at times?

The Witness: Just that one time I was called up here to relieve him.

Trial Examiner Leff: All right. Go ahead.

Q. (By Mr. Hinslea): Isn't it a fact that when a heelsman wants relief the watchman gives him relief at he wheel? A. That's right.

Q. Now, you are not sure what river you were in, r what part of the river you were in when you wheeled n the Angeline? A. Well, in the wide part of the St. lair, up near the mouth of it.

Q. You are talking about the St. Clair River, or Lake t. Clair? That is the wide part. A. No; I am talking bout the river. I am not talking about the lake.

Q. Are you talking about the Detroit River, or the t. Clair? A. Well, you know where the paper boat comes ut up there at Huron or someplace in the northern part of t. Clair as you come into it?

Q. Port Huron. A. She goes out in the lake, Port Huron.

Q. That is where they have the five-mile current, you ean, the rapids they call it, where the boat— A. I don't now what they call it.

Q. You are talking about where the boat comes out at ort Huron at the entrance of the St. Clair River; what ey call the rapids? A. You mean the lake?

Q. Coming out of the lake at St. Clair River is what called the rapids, and you go under the High Level ridge? A. Yes.

Q. And that is where you steered? A. Yes.

Q. There is a big turn there coming out of the river. ow, how long were you on the Champlain? A. I was on ere from the 5th of May until the 13th of June.

Q. And why did you get off the Champlain? A. Because I was going back to the coast.

Q. Well, isn't it a fact that you missed the ship? A. Yes; I did miss the ship; but I was going back anyhow.

Q. And you left your clothes on it? A. That's right.

Q. And you didn't tell them at all you were quitting? A. No. I wasn't quitting at the time.

Q. Well, did you have any intention of quitting? A. The Mate told me when we left that we were going to be in port 24 hours. We were going to unload and going to load coal. He said that I could be off until then, because I had a man to stand my watch. The ship left in four hours. I missed the ship. I didn't know about it until the time I came back. So, I called up the personnel manager, Mr. McHale, at that time, and he told me the circumstances. He said, if I wanted to catch it in Detroit or the Soo, that I could, and they would take care of it. I explained to him that I better go back to the coast, because I had to go to the Marine Hospital at the time for a wart that I had on the bottom of this foot. I had to have X-ray treatments on that. It took about three or four weeks to get that cured.

Q. Well, now, where was the Champlain when you missed it? A. She was at Ashtabula.

Q. Unloading iron ore? A. That's right.

Q. Did you know from your experience that it only takes four or five hours to unload iron ore? A. It takes about six hours on the Champlain, and to load coal.

Mr. Belkin: Just a moment. Mr. Examiner, it is true that a certain amount of latitude should be allowed counsel. I have made several objections in the course of this record on the immateriality and irrelevancy that counsel for the Respondent insists upon bringing into the record. I certainly think this matter is irrelevant. Regardless of what the situation was in regard to the Champlain. The Board has made no allegations concerning it. It has no relevancy to the issues in this case. I don't see why it should be included in this record.

Trial Examiner Leff: How do you contend it is relevant?

Mr. Hinslea: The competency of a seaman or deck hand is not to miss the ship. That all goes to competency. That is all.

Trial Examiner Leff: Did the Respondent fire him because he missed the ship in 1943?

Mr. Belkin: That is on an entirely different line.

Mr. Hinslea: Do you want the Respondent to give his testimony in advance, Mr. Examiner?

Trial Examiner Leff: No, but unless you tell me that is one of the reasons why you fired him, I don't see that it is material at all.

Mr. Hinslea: We expect to show, Mr. Examiner, that at times this man was as much as an hour and a half late in his watch.

Mr. Belkin: On board the Champlain?

Trial Examiner Leff: Will you please address your remarks to the Examiner.

Mr. Hinslea: On board the Olds.

Trial Examiner Leff: What has his lateness on another line got to do with his discharge?

Mr. Ray: He had a habit of lateness.

Trial Examiner Leff: Well, did you know about that at the time you discharged him? Were you motivated by the fact that he was late on a vessel in 1943?

Mr. Hinslea: That was one of the elements. Not the Champlain. It was one of the elements that he was discharged from the Olds.

Trial Examiner Leff: I am going to rule this testimony to be irrelevant at this time. If an issue was raised as to whether he was late in 1944, and he denies that he was late, and other matter is raised that may indicate that his habit of lateness is pertinent to a determination of the issues, then I will let you go into it at that time. But I don't want to waste time with that now. Please proceed.

Mr. Ray: He won't be here then.

Trial Examiner Leff: Well, he is here now. You can find out.

Mr. Hinslea: We are trying to find out what his habits are.

Trial Examiner Leff: Well, certainly you know at this time why you discharged him.

Mr. Hinslea: I don't know how much more clear I can make it to the Examiner that one of the elements was his tardiness.

Trial Examiner Leff: Why don't you go into the question of his tardiness in 1944?

Mr. Hinslea: Well, in due course we will.

Trial Examiner Leff: I fail to see what his tardiness in 1943 has to do with the issues in this case. He was working for your line at that time. Objection sustained.

Q. (By Mr. Hinslea): Now, Shartle, did you actually have a talk with Captain Murray when you were hired in the Pittsburgh office in March, 1944? A. Yes; I did.

Q. You were told to report to the ship the next day? A. That's right.

Q. So that it wasn't Zyp that hired you; it was Murray; was it not? A. That's right. Mr. Zyp introduced me to Mr. Murray at the time.

Q. Murray told you to report to the ship? A. After Murray interviewed me.

Q. Now, tell me something about the Olds with reference to her size, her age, and what kind of a ship she is.

Mr. Rosenfeld: Mr. Examiner, I am going to object to that. It is immaterial, irrelevant, and incompetent. What the physical characteristics of this ship has to do with this case is beyond me.

Trial Examiner Leff: What are we talking about, the ship in 1944?

Mr. Hinslea: The ship in 1944, the one he charges he was fired from.

Trial Examiner Leff: I will see where it leads.

A. Well, she was an ore carrier. The length was about 641 foot. She had about a 65-foot beam. Her depth was—her draught was about 24 feet. She carried about 15 ton—15,000 ton; and she did about 17 miles an hour to 15. She was low pressure steam turbine coal burning.

Q. What do you mean by low pressure? A. Low pressure. High pressure is usually oil burning. She had 18 hatches, and an iron deck hand. She had electric mooring winches, and electric windlass. Everything was practically electric on it.

Q. She was one of the most modern ships on the lakes; was she not? A. That's right.

Q. As a matter of fact, she was at that time the latest—one of the latest ships built on the Great Lakes; was she not?

Mr. Belkin: I will be glad to stipulate that, your Honor.

Mr. Hinslea: May I go along with my cross examination? What are you afraid of?

Mr. Belkin: Not a thing. It is just a waste of time.

Q. (By Mr. Hinslea): She had a lot of electrical appliances; did she not? A. She had a lot of electrical appliances. She was one of the most modern. I wouldn't say the most modern.

Q. She was one of five? A. One of five. But the Maritime also built some other ships.

Mr. Rosenfeld: Mr. Examiner, I think the witness should be permitted to answer his questions.

Q. (By Mr. Hinslea): They hadn't come out yet? A. Yes; they had.

Q. Watchmen are supposed to handle this iron deck hand, to put on and take off hatches? A. That's right.

Q. Had you had any experience with that before? A. The mate always did it—

Q. Now, wait a minute. And please answer my question. I asked: Did you have any experience with the iron deck hand before you got on the Olds? A. No.

Q. Now, she had electric winches; did she not? A. Yes.

Q. And those winches handled from the side of the ship; did they not? A. That's right.

Q. With an electric—a handle like a motorman has on a streetcar; isn't that right? A. Yes.

Q. Now, it is part of the job, is it not, for watchmen to handle winches? A. That's right.

Q. And did you have any experience with handling these electric winches such as the Olds had before? A. I certainly have had.

Q. On what boats? A. On the Mormacmoon, C-3, high pressure steam turbine.

Q. Did she have the electric winches which were controlled from the side of the ship? A. Not from the side, but right by the booms. The same thing.

Q. Did you have any experience with winches as the same type as the Olds has? A. Yes.

Q. And you say the Mormacmoon had the same type? A. That's right.

Q. They weren't the same—the operation was not at at the side of the rail? A. No; but they were right at the hatch where you used the boom.

Q. Right in the center of the ship; weren't they? A. Yes.

Q. But on the other hand the Olds operated from the side of the ship; didn't it? A. Yes; but a different case there. You are altogether wrong.

Trial Examiner Leff: What is the difference in operation, if it is on the side of the ship or somewhere else?

The Witness: There is no difference at all whatsoever. There is no difference.

Trial Examiner Leff: Is it just a question as to where you have to go to press the button, or whatever you do?

The Witness: Well, you work from the side of the ship on these with the winches you run your lines out back and forth. On a freighter you control your booms. You are right over the hatch. Right here is the hatch (indicating). You are working your winches from there. Electric winches. There is no difference at all. They all have brakes on them. They all have the levers and the switch to turn it on.

Q. Now, how long were you on the Mormacmoon? A. A. I was on there for two months, 60 days.

Q. What dates? A. What dates? From the 13th of January to the 13th of March in '44.

Q. And how long were you in port in that time? A. Well, I was three weeks in New York, and two weeks in Cardiff, and another week in New York.

Q. Were you handling those winches all the time? A. I was handling them when they were topping them and lowering them.

Q. How often did that happen? A. Well, in and out of port. Then they had to change them for the long Sherman at various times. Maybe an hour every day or more.

Q. Do you remember an occasion on the Olds when you were handling the winches, after the boat got started, and the 2nd Mate had to take the winches away from you? A. No. Where was this?

Q. I am asking you: Do you remember that occasion? A. No.

Q. You deny that the 2nd Mate on one occasion had to take the handling of the mooring winches away from you? A. Yes.

Q. You deny that? A. That's right.

Q. Now, do you remember an occasion when you were painting during the fit out that the Mate had to speak to you about doing your work, and not interfering with the other sailors? A. I didn't interfere with any of the other sailors, and I did my work.

Trial Examiner Leff: Well, did the Mate ever speak to you? That is the question.

The Witness: No.

Trial Examiner Leff: Well, do you deny that the Mate ever spoke to you about interfering with other sailors?

The Witness: He never spoke to me about interfering with other sailors. No.

Trial Examiner Leff: That is what the question was.

Q. (By Mr. Hinslea): Now, do you remember, Mr. Shartle—I will ask you about the winches again. Do you deny that while the ship was loading at Two Harbors, that the 2nd Mate had to take the controls of the winches away from you? Do you deny that? I will tell you, specifically, at Two Harbors. A. Yes.

Q. He didn't? Do you deny it? A. He did not take the winches away.

Q. Well, do you deny it? A. Yes; I said.

Q. Now, these winches, when you operate them, there are deck hands on the deck handling the mooring lines; are there not? A. That's right.

Q. And there is a chance, if you don't handle these winches properly, you can part these lines and injure deck hands; isn't that right? A. That's right.

Q. Now, during the fit out, Mr. Shartle, do you admit, or deny, that on two different occasions you reported for work in the morning from an hour to an hour and a half late? A. I went one morning to the Company doctor, where I was told to go the first thing in the morning. I came back to the ship. I had to get a pass to see the doctor. I was told to go there. They didn't have any pass. They had to type it out. Now, if they call that late, it is late. Otherwise I wasn't late.

Q. What about the other occasion? A. There was no other occasion.

Q. There was no other occasion? A. No.

Q. You were late just once, and that was because you went to the doctor? A. I was told to see the doctor in Lorain.

Q. Where was the doctor? A. I believe it is Dr. Black in Lorain. He is one of the steel mill doctors. He examined Pittsburgh employees out there. I believe that is his name, Black. I am not positive.

Trial Examiner Leff: When was that with reference to the date of your discharge?

The Witness: Well, when I got out to the ship, it was the next morning that I was told to go to the doctor the first thing when I came back to the ship.

Trial Examiner Leff: No. You don't understand my question. How long before your discharge did that occur?

The Witness: Oh, well, I was on the ship 24 days. So it happened the first day when I went to see the doctor.

Trial Examiner Leff: Well, when did you go to the doctor? Was that 24 days after you came aboard ship?

The Witness: No. No; that was the first day I came aboard the ship. After I got my gear out, I saw him about 12 o'clock noon. He told me to get my gear out there this evening, see. So I got out in the evening, and he told me to go see the doctor the next morning in Lorain.

Trial Examiner Leff: Oh, that was the first day you were working on the ship?

The Witness: Yes.

Trial Examiner Leff: Oh, all right.

Q. (By Mr. Hinslea): Now, you deny there were any other occasions that you were late? A. That's right.

Q. Now, do you deny or admit, Mr. Shartle, that during the painting operations of the ship that you encouraged men not to keep on painting, but to stop painting? A. No; I never told them to stop painting.

Q. Do you deny that you ever told some of these men that they did too much in the day, painting? A. No.

Q. They shouldn't do so much? A. No.

Q. You deny that? A. That's right.

Q. Now, Mr. Shartle, do you know how to splice cable? A. I splice rope, manila.

Q. Did you ever splice a cable? A. I have done a little. Not much.

Q. Now, part of a watchman's job and wheelsman's job is to splice; is it not? A. Yes. Yes.

Q. Now, do you remember the 1st Mate ordering you one time to splice a cringle with a tow line? A. With manila cable.

Q. With what? A. Where a manila cable—or manila line.

Q. I don't understand what a manila cable is. A. A manila line.

Q. Do you remember getting that order? A. Yes, I got the order.

Q. Did you splice it? A. I was starting to splice it. The Mate didn't like the way I was doing it. He took it away from me and let me go there. He didn't say anything else. He said, "I will get someone else to do it."

Q. That is your story? A. Yes.

Trial Examiner Leff: Now, when was that? How long after you came aboard ship?

The Witness: I might say it was just about three weeks. About the 21st.

Q. (By Mr. Hinslea): Now, isn't it a fact, Mr. Shartle, that you were given this order to splice the cringle in the manila tow line, which is part of the watchman's job, and the Mate wasn't there when you started. When he came back another man was doing the job, because you couldn't do it?

Mr. Belkin: I object to the question. As worded it includes a conclusion. "Which is part of the watchman's job."

Mr. Hinslea: He has admitted that.

Trial Examiner Leff: I will allow it. Answer the question.

The Witness: State your question again.

(Question read by Reporter.)

A. Another man was giving me a hand with it.

Q. (By Mr. Hinslea:) Did you ever splice a cringle in a tow line before? A. Yes.

Q. Where? A. I did it on the Angeline.

Q. When you were a deck hand? A. Deck watch.

Q. Under whose supervision? A. Under the 3rd Mate's.

Q. Did the 3rd Mate do it, or did you do it? A. We did it together. He was the one who showed me how to do it.

Q. You were assisting the 3rd Mate? A. That's right.

Q. Do you remember his name? A. Not offhand; no.

Q. Was it the same Mate on the Angeline all the time you were on her? A. Yes.

Q. What kind of steering gear did the Olds have? A. She had an electric steering gear.

Q. You are sure of that. A. Uh-huh. Iron mike she had also.

Q. You don't use the iron mike in the river; do you? A. No; but they use it in the lakes.

Q. Is it your testimony that Captain Murray, who was in the pilot house of the Olds entering the Detroit River at night? A. No; it wasn't night.

Q. It was in the daytime? A. That's right.

Q. What time of day? A. I was on the 6 to 10 watch. It must have been about 9 o'clock.

Q. In the morning? A. Yes.

Q. What watch did you stand? A. I was on the 6 to 10 watch.

Q. I thought you said you were on the 10 to 2 watch? A. I did not.

Q. You were on the 6 to 10? A. That's right.

Q. He called you up in the pilot house. Where was the ship at that time with reference to Bar Point? A. Here is Lake Erie (indicating)—

Trial Examiner Leff: Don't point. We can't get that in the record.

A. (Continuing): She was just about to get ready to go into the river. Just about entering the mouth of the river, about a quarter of a mile away, or less.

Q. Was the vessel light or loaded? A. She was coming up light.

Q. And is it your testimony that you took the wheel and steered the Olds up through the Amersburg Channel? A. Well, the upbound channel.

Q. How far up the river did you steer? You said about an hour. About where were you when you finally— A. I wouldn't know the point.

Q. You—are you at all familiar with the various ranges you had to go on up there? A. Mr. Mizener was showing me the different ranges I had to go on.

Q. Did he stay up there with you? A. Mr. Mizener was right beside me.

Q. Was anybody else in the pilot house besides you and Mizener and the Captain, Captain Murray and yourself? A. The 3rd Mate.

Q. What was his name? A. Frank something. I don't remember his last name.

Q. You began to organize within a few days after you got aboard the ship; didn't you? A. That's right.

Q. And during all the time that you were there no officer ever forbid you from organizing, or told you to stop, or in any way attempted to stop your organizing? A. No; but they told me I better watch my step or else I wouldn't be on the Olds any longer.

Q. You testified the engineer told you that? A. That's right.

Q. The 2nd and 3rd Engineers? A. That's right.

Q. But now I am asking you about the Captain, or the Mates, or the engineers, or anybody. Did anybody forbid you or prevent you in any way from organizing? A. No; they told me I'd better watch my step.

Q. Please answer my question. Did anyone on the ship in the way of licensed officers prevent you or forbid you from organizing?

Mr. Belkin: I object to that. That question is twofold.

Trial Examiner Leff: Is an engineer a licensed officer?

Mr. Hinslea: Yes; but not under his jurisdiction.

Trial Examiner Leff: Well, outside of the engineer, or the engineer's assistants, did any member of the licensed personnel ever tell you not to organize?

The Witness: The 2nd and 3rd Mates mentioned that I better watch my step, also.

Q. (By Mr. Hinslea): You didn't testify to that on direct. A. No; I didn't.

Q. Do you want to add to the testimony that the 2nd and 3rd Mates told you to watch your step on organizing? A. Yes; because I handed them Pilots in the forecastle. They told me I better watch myself.

Q. The 2nd and 3rd Mates told you that? A. Yes.

Q. When did they tell you that? A. I don't know the exact date, but it was around the first week when I went in their room and handed them the Pilots.

Q. Now, the first mate never made any statement like that to you; did he? A. No; he didn't.

Q. Or the Captain? A. No.

Q. Now, you testified, Mr. Shartle, or you have testified that you were on the 6 to 10 watch; is that right? A. That's right.

Q. You have also testified on direct examination that on a Sunday afternoon, about 1:30 p.m., that you went in the forecastle, as you call it—but I call it the crew hallway —to call your partner when the deck hand told you to go up and see the Mate. Now, what were you calling your partner for, at 1:30, if you were on the 6 to 10 watch? A. You are mistaken there. I was at 1:30 in the afternoon in my forecastle.

Q. You mean your room? A. Yes; my quarters. After lunch. I was sitting there talking to my partner of the room when the deck hand came up and knocked on the door, and came in and told me that the Chief Mate wanted me in his quarters.

Q. The fact that I have in my notes that you went to call your partner at 1:30, I made wrong notes on that? A. That's right.

Q. Because the only purpose of calling your partner would be to relieve you; isn't that it? A. That is the only reason I could think of.

Q. When you call your partner you call him about a quarter to ten; don't you, if you are on the 6 to 10? A. Yes. I don't call him, but the deck watch does.

Q. Now, after the Mate told you that you were incompetent, you then said you went down and talked to other people. Who did you talk to about it? A. As I said in my statement, I talked to the electrician, who was a licensed engineer. He held a second license, I believe, or a third, which they had to have in order to be an electrician on that type of vessel. I talked to the 2nd Assistant, and the 3rd Assistant at that time. I talked to several of the firemen and oilers, and coal passers.

Q. Tell me who you talked to? How many firemen did you talk to? A. Well, the guys who weren't on watch.

Q. Well, how many? A. Well, I'd say two firemen, the steward, the 2nd Cook, and the porter, a couple of oilers on deck, the coal passers. I talked to the deck hands, and deck watch, and watchmen. That is about all.

Q. As a matter of fact, you testified you talked to O'Connor, Mizener and Polly. They are wheelsmen? A. Yes.

Q. As a matter of fact, you talked to everybody on the ship? A. That's right.

Q. That was about 36 men, 37 men? A. Well, I didn't talk to the Chief Engineer, and I didn't talk to the Captain at the time.

Q. You talked to the Captain later? A. I talked to the Captain; yes.

Q. Why did you talk to the Engineer and the Fireman and the porter and the cooks about whether or not you were competent or not? A. Well, I thought they would have a general idea whether a person is competent, because they ride aboard those ships, and they usually know what a watchman is supposed to do. In their own opinion, they would probably know, although you might not think they are qualified. But they usually know what goes on aboard a ship, whether a guy is laying down on the job or doing his job.

Q. Did you believe that the assistant engineers who had nothing to do with the deck work, and the forward end work, in a matter of three weeks would be able to observe you as to whether or not you were a competent watchman or not?

Mr. Belkin: Objection.

Trial Examiner Leff: Well, you raised this thing, yourself, Mr. Belkin.

(Question read by Reporter.)

Mr. Belkin: If you please, Mr. Examiner, I will object to the wording of the question: "Who had nothing to do with the work on deck."

Trial Examiner Leff: Well, did they have anything to do with the work on deck, the engineers, the assistant engineer, the electrician?

The Witness: The oiler. They used to come up and take care—grease the winches. They were up on deck once in awhile.

Trial Examiner Leff: All right. I will allow the question, eliminating the words: "Who had nothing to do with the men on deck."

Can you recall the question?

(Question read by Reporter.)

A. Yes.

Q. (By Mr. Hinslea): Now, how old were the porters? A. I don't know their ages.

Q. Were they younger than you are?

Trial Examiner Leff: You mean in age or service?

Mr. Hinslea: In age.

A. I wouldn't be able to say how old they are. But the 2nd Cook and the steward, and the other fellow in there, they were older than I am.

Q. Did you talk to them? A. Yes; I did.

Q. Now, does the porter or the cook, or the second cook have an opportunity to observe how you handle yourself on the forecastle deck as lookout? A. Acting as lookout; no.

Q. Do they have an opportunity to observe and find out whether you can splice manila lines or not? A. No; but they can see me on deck when I am doing other things on the open deck.

Q. They might see you when you are scrubbing? A. Yes; that's right.

Q. But they might not be able to observe you when you are handling the hatches or running the iron deck hand?

Mr. Belkin: That is not a question.

Trial Examiner Leff: Well, put a question mark after it.

Mr. Belkin: That is a statement by counsel.

(Question read by Reporter.)

Trial Examiner Leff: Well, could they observe you under those circumstances?

The Witness: Why, sure; because they are not always cooking in the galley. They come out to get fresh air. They naturally see up the side—the side you operate the iron deck hand from is on the side where the galley is. They could come out and look right up the deck and see what is going on. Anyone could do that.

Q. (By Mr. Hinslea): Could they tell whether or not you were handling it right, the porter? A. I imagine so. The cooks and stewards have been sailing quite some time. They should know.

Trial Examiner Leff: I would like to get this straight. When do you splice manila rope on board ship?

The Witness: Whenever you need another line to go out, or an extra line in case of emergency. You do that.

Trial Examiner Leff: I am not a sailor, myself. It is a little foreign to me. Do you have to splice manila every time you hit shore?

The Witness: No. No.

Trial Examiner Leff: Well, how often—

The Witness: You may have to do it once every six months or less than that. It all depends how often you need it. It all depends on what kind of manila—some manila will last a long time. Other manila will break right away, unless it is fairly good stuff.

Trial Examiner Leff: Well, you were on the ship in 1944 approximately two months; is that correct?

The Witness: On the Olds.

Mr. Belkin: Approximately 24 days.

The Witness: 24 days.

Trial Examiner Leff: Is that the ship from which you were discharged?

The Witness: Yes.

Trial Examiner Leff: Well, during those 24 days on how many occasions were you called on to splice manila?

The Witness: Just once.

Trial Examiner Leff: And that was how long before your discharge?

The Witness: Oh, I'd say about four days.

Q. (By Mr. Hinslea): Now, Mr. Shartle, I think you testified that after the mate told you that you were being discharged, and it was the—it was his judgment that you were incompetent, you went up into the pilot house of the ship; is that right? A. After he said that I was discharged, he told me to come back in about 10 minutes or so, and he would give me my discharge and my paycheck. So I went around to see various members of the crew at that time.

Q. Well, what I am getting at is: When did you go up in the pilot house? A. After I came back and got my discharge and my check.

Q. Where was the ship at that time? A. She was on her way to Conneaut.

Q. Was the Captain in charge? A. The Captain was up in the wheel house at the time.

Q. Was he in the front window, in charge of navigation of the ship? A. No; he was standing around smoking a cigar and talking.

Q. Smoking a cigar? A. Yes.

Q. You are sure of that? A. Yes. He smoked them once in a while. Smoked cigarettes, too.

Q. You are positive of that? A. At that time; yes.

Q. All right. Now, how far were you away from the breakwater at Conneaut, the lighthouse? A. Well, as I was called in about 1:30—about 2:00 I'd say we were about —2:00 was the time I went up to see the Captain. I got through talking to him about 2:20. So, I'd say by the time he told me to "get to hell out of the wheel house. I am busy now." It would be about 45 minutes before arriving.

Q. You weren't surprised that the Captain told you to get out of the pilot house; were you? That he was busy? A. I don't see where he could have been busy at that time.

Q. Was it a practice—

Mr. Belkin: Let him finish his answer.

A. (Continuing): I don't see where he could have been busy at that time, because they were quite a ways out, and they were still on the iron mike at the time.

Q. Now, has it been the custom and practice on the boats you have been on since the Angeline, Champlain, and Munising, to go up in the pilot house when the Captain is up in the pilot house looking after the ship, and talk about your discharge, or quitting? A. Well, I have seen several of the deck hands up there in the rivers just watching the wheelsmen, and discussing things with the Captain. In fact one of them asked a foolish question of the Skipper, which I do not remember. But it was all laughed about on the ship. They were right around Detroit at that time. I don't think anybody could be any more busy than that. Some deck hand came up and asked a foolish question.

Q. Was the Captain in charge of the ship or the Mate? A. The Captain was.

Q. Now, you told the Captain that you thought you were qualified, because of the mere fact that you had an A.B. certificate? A. Yes; and I was able to do my work, also.

Q. Well, you didn't add that on direct. As I have the notes you merely told the Captain: "I have an A.B. ticket." Now, you want to add that you also told the Captain that you were able to do your work, also? A. I said I was competent. That is what I said.

Q. Did you say you were competent because you had an A.B. ticket? A. I told him I was competent—well, he knew I had an A.B. ticket.

Q. You just said: "I am competent." A. Yes; I did. I said I was competent. I said I wasn't incompetent. That is what I did say.

Q. Now, you said the conversation between you and the Captain got quite hot. Did Captain Murray become abusive? A. Well, he was raging, getting red in the face. He was getting hot.

Q. Was he foaming at the mouth? A. Well, you can call it foaming.

Trial Examiner Leff: How much did the Captain weigh?

The Witness: The Captain was a big boy. He was about—over six foot, and built like an all American tackle.

Trial Examiner Leff: This Captain Murray?

The Witness: Yes, sir. Big, reddish-faced man, too. When he got red, he got red.

Q. (By Mr. Hinslea): And very abusive? A. I wouldn't say he was abusive, but I wouldn't like to tackle with him.

Q. How old a man do you think he was? A. I'd say about 60.

Q. How long did this conversation take between you and the Captain? A. I'd say about 20 minutes. I went up there to him and went out about 2:20.

Q. What was said other than—other than you said, "I am competent," and he told you that he had to take the judgment of the Mate? A. Well, as I believe I said in my statement before, I asked him why he was firing me. He said, "Because the Mate said you are incompetent." I said, "Well, why do you go by the Mate," and so forth.

He said he goes by what the Mate says. He doesn't run the men on deck. I asked him if he thought I was incompetent. He said, "I still go by what the Mate said. The Mate has got charge of all the men on the deck, and he does the hiring and the firing." I told him it was because of my Union activities. He denied it. I said it was. And he said it wasn't. It went on back and forth. He got very mad. He got red in the face, and said, "Get to hell out of here. I am busy now."

Q. Well, did you get mad, too? A. Well, I was so darned mad I didn't know what to say when he told me to get out.

Q. Did you say anything? A. No; I just walked out, and I said, "Good luck to you."

Q. But you were mad? A. Why, certainly. I was being discharged for no reason that I could see any fault of my own. It was Union prejudice. That is what I believe it was.

Q. How old are you, Shartle? A. I am 23.

Q. And at that time of this episode you were 21 or 22? A. I would be 22.

Q. Now, isn't it a fact, from your observation on these boats that the Mates do have charge of hiring and firing men who run the deck department?

Mr. Rosenfeld: I am going to object to that. I don't think it is material or relevant here, unless Mr. Hinslea wants to repudiate the authority of the master on the lake boats.

Trial Examiner Leff: Do you deny that a Mate has authority to hire and fire?

Mr. Rosenfeld: If Mr. Hinslea insists that only Mates have authority to hire and fire on the lake boats—

(Question read by Reporter.)

Trial Examiner Leff: Objection overruled.

Mr. Rosenfeld: Exception.

A. Well, as far as I know, they tell the Skipper, and the Skipper agrees with them, and they are fired, or they are hired. It is usually done through the personnel office, the hiring. Most of the time they send the men up there, or the Lake Carriers Association.

Q. Who is the first man you talk to when you get aboard the ship when you are going to ship out? A. You usually go up and see the Captain.

Q. Don't you usually go and see the Mate that is on the deck, and tell him who you are? A. No; we usually hunt for the Captain the first thing.

Mr. Belkin: If the Examiner please, I think all parties will agree that the Mate has the power to hire and fire, as well as supervisory—well, put it this way: The Mate has supervisory authority aboard this vessel. I don't think the Board cares to dispute it.

Trial Examiner Leff: That is not exactly the question. The question is as to who has primary charge over watchmen; whether it is the Mate or the Captain, or what officer it is.

Is that the point you are making, Mr. Hinslea?

Mr. Hinslea: Yes.

Trial Examiner Leff: All right. Please proceed.

Q. (By Mr. Hinslea): Now, Shartle, when you finally talked to the Mate just before you got off, will you repeat to me just what the Mate said to you when you again asked him if you were really incompetent? A. Yes; he said, "There are certain things a person has to do nowadays, whether he likes it or not." He went on to say that this year, or the following year—"I am supposed to get my Master's job on one of these ships." He said, "If I do get a ship, I would like to have you back with me."

Q. Did you give him your address? A. He knew my address. He had it right down on the log.

Q. Did you say you would like to ride with him again? A. Yes; I did.

Q. Did you know that among the deck watch there was an A.B.? A. Sure; Herman something.

Q. Did you know that he wasn't promoted to be a watchman, even though he had an A.B. certificate? A. Did I know that he wasn't promoted to be a watchman, even though he had an A.B. certificate? Yes; I certainly did.

Q. So it does require something more than an A.B. certificate to be a watchman?

Mr. Rosenfeld: I object to that. It is immaterial and irrelevant. It is asking for a conclusion of the witness's mind, and asking about the policy of the Company.

Mr. Hinslea: I am asking his opinion.

Mr. Rosenfeld: His opinion is immaterial here.

Trial Examiner Leff: I will permit it. Objection overruled.

A. You asked me, is a deck watch—

Q. (By Mr. Hinslea): I asked you if you—if it isn't a fact that you had to have something more than an A.B. certificate to be a good watchman? A. Well, the fact is that if you are going to be a watchman you are supposed to know the rules of the road, and you are supposed to get the Coast Guard certificate for it. I don't believe an ordinary seaman has a Coast Guard certification for it at all.

Q. Certification for what? A. For being an A.B., and knowing the rules of the road. When you have to stand lookout, you are supposed to know the rules of the road.

Q. Do you know the rules of the road? A. Yes.

Q. What is the special circumstance rule? A. A special circumstance rule?

Q. Yes?

Mr. Belkin: I object, Mr. Examiner.

Mr. Hinslea: He says that is one of the requisitions, and he knows the rules of the road.

Mr. Belkin: Well, suppose he doesn't know the rules of the road?

Trial Examiner Leff: Well, he said he did. Let's find out whether he does.

The Witness: Mr. Examiner, they don't ask us all those questions. There are various questions that they do ask.

Trial Examiner Leff: Well, can you answer the last question?

The Witness: No; I can't. If he means the danger signal, I can.

Trial Examiner Leff: What are the rules of the road, just generally?

The Witness: Well, there is your passing signals, there are your lights, your range lights, your mast head light, your running light, what you do at anchor, fog signals, passing signals, and what light you display on small craft and sailing vessels, and so forth.

Trial Examiner Leff: Is it published in a manual of some kind?

The Witness: Well, yes; it is—the Coast Guard has a manual—not a manual. It is a pamphlet put out by the Coast Guard for your qualifications for able seaman.

Trial Examiner Leff: In order to get an A. B. certificate do you take some kind of an examination?

The Witness: Yes; through the Coast Guard. I want to state—

Trial Examiner Leff: And are you asked questions concerning rules of the road?

The Witness: Yes, sir; but the Mate asks more questions, and so forth, where you couldn't expect an A. B. to know them all, where the mates are supposed to know everything.

Trial Examiner Leff: What kind of an examination do you take to get your certificate?

The Witness: They gave us a written examination. It is down at the Coast Guard here in Cleveland, if they want to see it.

Trial Examiner Leff: Did you also have an oral examination?

The Witness: No; they just gave us a written examination.

Q. Are you required to demonstrate your ability to splice manila, or do other physical operations?

The Witness: Well, all about wheeling. They ask you all about wheeling, and everything. They give you a few notes, and so forth. You do splicing at that time.

Trial Examiner Leff: Will you proceed, please.

Q. (By Mr. Hinslea): What do they ask you about wheeling? A. They ask you the points of the compass, and so forth.

Q. Is that all? A. And how your rudder and so forth works, and how your ship's—well, that is about all.

Q. Well, to get an A.B. certificate you have to know something about steering and wheeling; don't you? A. Yes.

Q. Now, after you got off the ship, did you make an attempt to get any other position until you went to the Lake Carriers Association, other than going to the Pittsburgh Steamship Company? A. No. I tried Pittsburgh, because I wanted to get back.

Q. Why? A. I wanted to organize. And I wanted to work aboard a Pittsburgh ship, because they have a lot of ships, so, they would have more jobs open than the other companies.

Q. How about the Lake Carriers, they have a great many fleets; don't they, that they get men, and recommend them for jobs? A. They have a lot of fleets.

Trial Examiner Leff: Let me ask you this question: After you were discharged in 1944 from the Pittsburgh Lines, did you file any application with the United States Employment Service? A. No. No.

Trial Examiner Leff: You never did?

The Witness: No.

Trial Examiner Leff: All right. Proceed.

The Witness: The seamen on the lakes, they don't do that. As a matter of fact, I know on the coast, when you get off a ship you just get off, and they give you that—sometimes on some ships they give you a card telling you when to ship again, and you go down—

Trial Examiner Leff: But you never registered with the USES; did you?

The Witness: No.

Q. (By Mr. Hinslea): Now, did you go to the NMU Hall here and register for a job on their shipping list? A. I was registered there before. I didn't register—no; I didn't go to ship through the Union Hall, because those fellows stay on those ships.

Q. Well, that isn't answering my question. You didn't go to the hall and register for a job? A. No; I didn't.

Q. And the only effort you made for a job was to go back to the Pittsburgh Steamship Company?

Mr. Belkin: I object to that.

Mr. Rosenfeld: That is not the testimony.

Mr. Belkin: The witness has testified on his direct examination that he only went to the Pittsburgh—

Trial Examiner Leff: You don't have to inform the witness what he testified to before. It is a proper question. I overrule your objection.

Mr. Belkin: He is misquoting the witness.

Trial Examiner Leff: He is not misquoting the witness. He is asking a question. Now, answer the question.

A. No; I went right back to Pitt. I went there for several days until Mr. Zyp told me to try the Lake Carriers, and try some of the other companies like Cleveland Cliffs, and so forth.

Trial Examiner Leff: How long were you out of work?

The Witness: I was out of work about 12 or 14 days, from the 23rd until the 5th of June.

Q. (By Mr. Hinslea): When did you first go to the Lake Carriers for a job? A. About three or four days after I had been trying with Pitt.

Q. Then finally you went to Cleveland Cliffs. When was that? A. I went about the 1st or 2nd of May.

Q. Can you tell me a little more accurately when you went to the Lake Carriers? A. I don't know the exact date, no; I can't. I went up there. I said, "Do you have any jobs?" They said, "No. Come back again." So they didn't even take my application. Then I tried Cliffs. I called up Lake Carriers, and called Pitt and so forth, and finally got a job.

Q. You got a job with Cliffs right away; didn't you? A. Not right away; no.

Q. Well, I thought that was what you testified to on direct. What is the fact? How long did you have to wait after you applied to Cleveland Cliffs before you shipped? A. Couple of days.

Q. A couple of days.

Mr. Hinslea: That is all.

Re-Direct Examination.

Q. (By Mr. Belkin): Were you at any time criticized for being late while you were on board the Olds, Mr. Shartle? A. That one time I went to see the doctor in the morning and I couldn't get examined because they didn't have the proper slip. They were out of them. I had to go back to the ship, and they had to type up another slip. Then I went up to the doctor's.

Q. Were you thereafter criticized for being late by any member of the licensed personnel of that ship? A. No; I was aboard all the time. I was able to stand my watch on time, and work on time.

Q. At the time of your discharge when you were up in the wheel house with the captain, did he tell you that he

knew about your being late that day? A. No. No; he didn't tell me.

Q. Did he discuss with you your failure or alleged failure to splice rope at that time? A. No; the mate just said that—

Q. I mean the captain. A. No; the captain didn't.

Q. When you were talking to the mate at the time you received your discharge did the mate say anything about your inability to splice rope, or alleged inability to splice rope? A. No.

Q. Did the mate in any way criticize you for your work, beyond saying that he said you were incompetent? A. No; just the time he took the rope. He didn't like the way it was being spliced, and he got—he said he was going to get somebody else to do it.

Q. Did he tell you at that time that you did not know how to splice rope? A. He said he didn't like the wa I was going about it.

Q. When did you first begin to organize that ship? A. About the third day I was on there when I started bringing the Pilots aboard.

Q. How long thereafter were you pulled off the rope splicing job? A. That was about—

Mr. Hinslea: He has testified to that before, your Honor.

Trial Examiner Leff: There is testimony in the record on that.

Mr. Belkin: Is there? Then I shall waive it. I wasn't sure.

Q. (By Mr. Belkin): Now, the day of your discharge, you testified that you went about and spoke to the porter, the second cook, the mates, and others throughout the boat; didn't you? A. After I was discharged; yes, I did.

Q. Did you at any time in your discussion with them ask any one of these people to take over your job as organizer of the ship? A. Yes; I did—

Mr. Hinslea: This is not proper re-direct, your Honor.

A. (Continuing): Before I left, I did.

Trial Examiner Leff: How is that pertinent to the issues of the case?

Mr. Belkin: Well, the matter was brought up by counsel for the Respondent as to the conversation that Shartle held with these individuals. He questioned it. I don't know what inferences he wishes to draw, but I feel if there are any inferences to be drawn the full conversation should come out.

Trial Examiner Leff: I don't think it is of sufficient materiality to warrant the waste of time.

Q. (By Mr. Belkin): Can a seaman get a job through the USES? A. Can a seaman get a job through the USES?

Q. Yes, to our knowledge. A. Not that I know of. Not on a ship. It all goes through the unions and Lake Carriers, and the War Shipping Administration.

Mr. Hinslea: Well, I don't want to waste a lot of time. But I think in 1944 the USES was a place—had a place available for seamen, and they should register there. We can get together and stipulate, if it is going to be a point, because that was the situation in 1944 on the Great Lakes.

Q. (By Mr. Belkin): Was it necessary for a seaman to obtain a job through the USES, or could he get jobs on his own? A. He could go out and get jobs on his own.

Trial Examiner Leff: Maybe the parties will agree to that. Didn't the USES accept registrations by seamen? Don't they do that today?

Mr. Rosenfeld: That is not my understanding. The War Shipping Administration on the coast and up here, the War Shipping has something to do with it. The ODT—

Trial Examiner Leff: All right. Did you register with the War Shipping Administration?

The Witness: No. I shipped through the Union, because that is under the War Shipping Administration, because it goes right along with it.

Trial Examiner Leff: I don't think we should waste too much time on this. There are only 12 days involved. Are you claiming that he incurred wilful losses by virtue of that 12-day period?

Mr. Hinslea: When we get to the question of damages, if it becomes—if you determine there was an unfair labor practice—

Trial Examiner Leff: We don't take evidence on the question of damages. This is not a civil litigation. The

only thing you can prove is that he wilfully failed to secure available work.

Mr. Hinslea: I think that is true.

Trial Examiner Leff: You will have to show that there was work available for him, and he refused to take it.

Mr. Hinslea: I expect to do that, your Honor.

Mr. Belkin: That is why I am following this line of interrogation.

Trial Examiner Leff: Just remember there are only 12 days involved, and he spent about four days seeking work from the Pittsburgh.

Mr. Hinslea: If they are waiving the question of damages—

Trial Examiner Leff: I am not asking anybody to waive anything.

Mr. Hinslea: The question he is talking about is because—

Q. (By Mr. Belkin): Mr. Shartle, do you know what the Lake Carriers Association is? A. Sure.

Q. Will you explain it to us? A. It is a bunch of companies, Pittsburgh, Cleveland Cliffs, all the companies practically on the lakes that aren't unionized. They pool their money—

Mr. Hinslea: I object to that.

A. (Continuing): They pool—

Trial Examiner Leff: You didn't object to the question until he started answering. Now, if the answer is not responsive to the question you can move to strike it out. Now, will you read the question?

(Last question read.)

Q. (By Mr. Belkin): I believe you finished your answer; haven't you? A. I was going to say a little more.

Trial Examiner Leff: Go ahead and finish your answer.

A. (Continuing) —to operate these hiring halls so they can get men on the ships when they need replacements, and so forth.

Q. (By Mr. Belkin): Did you register at the hiring hall of this association? A. I went up there and asked if they had any jobs. I told them my name. They said, "We

have nothing in. Come back, or call up again." I went back a couple of times, and I didn't get anything. They didn't take my application. They had previously, once before, when I went out on the Steamer Munising with Cleveland Cliffs.

Q. When did you go to their hiring hall; do you remember the date? A. You mean when I shipped out on the Munising?

Q. No. Am I to understand from what you tell me that once registered, your registration is continuous, or is it necessary, after leaving a ship, to register—

Trial Examiner Leff: Well, he testified what the circumstances were. When did you go to the Great Lakes hiring hall?

The Witness: To get another ship?

Trial Examiner Leff: Yes; after you were discharged from the Pittsburgh ship.

The Witness: I went about three or four days after I had been contacting the Pittsburgh Company.

Trial Examiner Leff: All right.

Mr. Belkin: That is all.

RE-CROSS EXAMINATION.

Q. (By Mr. Hinslea): You didn't register there, though, you just asked them if they had a job; but you didn't register? A. Yes; I asked them. I told them my name and everything.

Q. I know that. You testified— A. But they didn't take it down.

Q. But did you actually ask for an application so you could register in accordance with their rules? A. If they want you to register they give you a card. They didn't give me a card.

Q. Did you ask for one at all? A. No; I didn't ask for a card. I—

Mr. Hinslea: That is all.

Trial Examiner Leff: No futher questions of this witness?

The Witness: I gave them my telephone number.

Trial Examiner Leff: There is no question pending now. The witness is excused.

(Witness excused.)

Trial Examiner Leff: We will have a five-minute recess.

(A short recess was had.)

Trial Examiner Leff: The hearing is in order.

JOHN VOGEL, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Q. (By Mr. Belkin): What is your full name and address, please? A. John Vogel, Steamship Alabama, East Ninth Street Pier, Cleveland, Ohio.

Q. Mr. Vogel, were you employed by the Pittsburgh Steamship Company in 1944? A. I was.

Q. When were you first employed by them in that year? A. I went aboard ship on March 27th.

Q. When did you leave the ship? A. June 28th.

Q. What was the ship on which you worked? A. The Olds.

Q. The Irving S. Olds? A. Irving S. Olds.

Q. What was your job aboard that ship? A. Watchman.

Q. Are you an A. B.? A. I am an A. B.

Q. Who were your supervisors aboard that ship? In other words, who were the licensed personnel; do you recall? A. Captain Murray. The mate was John—I forget the rest of them.

Q. Do you remember the chief's name? A. No.

Q. When you shipped aboard the Olds were you a member of the NMU? A. No, sir.

Q. Did you thereafter at any time become a member of the NMU? A. I did.

Q. Can you tell us when that was? A. I joined up about three weeks after I come aboard.

Q. How long after? A. About three weeks.

Q. And do you recall the time when Mr. Shartle left the ship? A. I do.

Q. Did you take up his job as organizer? A. Yes, sir.

Q. And did you participate in the Union campaign, or in the organizational campaign of the Union aboard that ship? A. I did.

Q. While you were on board the Olds did you at any time discuss Union matters with any of the licensed personnel? A. No.

Q. Were you present at any time when the licensed personnel discussed matters involving the Union? A. Yes; I was.

Q. What members of the licensed personnel did you hear discuss the Union? A. The engineer was the first one.

Q. Were there any others? A. The captain and the mates.

Mr. Hinslea: Which engineer?

The Witness: The chief engineer.

Mr. Hinslea: Who else?

Mr. Belkin: He said the captain and the first mate.

Trial Examiner Leff: Fix the time and place, and who was present.

Mr. Belkin: Yes; we will bring it out, if the Examiner please.

Q. (By Mr. Belkin): Now, Mr. Vogel, directing your attention to the conversation at which the chief engineer discussed the Union, can you tell us when that occurred? A. About the latter part of April.

Q. And where did it take place? A. In the mess room.

Q. Were you present? A. I was.

Q. Do you know if anyone else was present at the time? A. All the deckhands were there at the time.

Q. Can you name any of them? A. I didn't know them by name.

Q. What, if anything, did the chief engineer say at that time and place? A. He said that he didn't like the NMU, on account of having Negroes working and rooming with the white men on board the ship.

Q. Did anyone else speak? A. No; no one.

Q. Directing your attention to the conversation which you testified the captain had, can you tell us when that occurred? A. The latter part of May, around the 1st—yes; about the latter part of May.

Q. Where was that held? A. In the pilot house.

Q. Were you present at the time? A. I was.

Trial Examiner Leff: Will you try to raise your voice? It is rather difficult to hear you.

The Witness: I was.

Q. (By Mr. Belkin): Who if anyone else was present in addition to yourself and the captain? A. The wheelsman and the first mate.

Q. Do you recall the name of the wheelsman? A. The wheelsman and the first mate.

Q. Do you recall the name of the wheelsman? A. No; I don't.

Q. Can you tell us what if anything the captain said? A. Yes; the captain said that he would sure hate to pass out orders to colored wheelsmen and watchmen aboard a ship.

Trial Examiner Leff: I can't hear you.

The Witness: He said he would hate to give out orders to the colored watchmen and the wheelsman aboard of a ship.

Q. (By Mr. Belkin): Did he explain why? A. He said that he didn't like them aboard of a ship, or to give orders to them.

Q. Did anyone else present speak? A. No.

Q. Directing your attention to the conversation concerning Union matters of the first mate, will you tell us when and where that occurred? A. It happened about the 19th of June.

Q. Where did it take place? A. On the after end of the ship. I was taking care of the after windlass.

Q. Who else was present? A. Joe Riley was there, for one.

Q. He was a seaman, a deckhand? A. Deckhand.

Q. Was anyone else present? A. There was—the deckwatch was there at the time. One of the deckwatches.

Q. Do you recall that man's name? A. No; I don't.

Q. Will you tell us what was said during that conversation, please? A. Well, he come aboard of the boat. He was drinking pretty heavily. He wanted to know when his Union book would come through. I told him—

Q. Did he address his remarks to you when he boarded the ship? A. Yes. The mate was there at the time. So he wanted to know when he would get his book. I told him I didn't know. I turned the money in, and it was about

three weeks later then. He then said that he wanted the money or the book. I told him I couldn't do nothing about that. Then the mate spoke up.

Q. What did the mate say, if anything? A. He said, "So you are the Union organizer." He said, "That is where all this trouble is coming from." He said, "You can pack up your clothes and get off." So I told him—I said, "We only have one hour until the ship sails. I can't pack my clothes and be off in that time." He said, "All right. You can make another trip. When you come back have your clothes ready to go."

Q. Did you make that trip? A. I made that trip. When I came back, about a week later, I was all packed up ready to go.

Q. Did you leave the ship? A. I left the ship.

Q. At what port? A. It was in Conneaut.

Q. Were you familiar with Howard Shartle aboard the ship? A. I was. He was my roommate.

Q. Did you ever work with him? A. I worked with him on the stage, over the side, painting.

Q. To your knowledge, did the mate or any other member of the licensed personnel of the ship ever criticize Shartle for his work? A. Never.

Q. There has been some testimony as to a certain incident involving Howard Shartle and a certain rope splicing job. Were you present at that time? A. I was.

Q. Were you working on that rope with Shartle? A. I went out and was helping Shartle along, and the first mate came out and stopped us from working. He told Shartle then that he would have somebody else do that. On the following watch, I came on, and he had me to splice the line with him.

Q. Did the mate splice the rope in the meantime, himself? A. No; I spliced it.

Q. Did the mate say that Shartle didn't know how to splice rope? A. He did.

Q. In your opinion was Shartle capable of splicing that rope with you? A. I believe he was.

Q. How long have you been sailing? A. Twenty years.

Mr. Belkin: You may cross examine.

CROSS EXAMINATION.

Q. (By Mr. Hinslea): Mr. Vogel, you are now on the Alabama? A. Yes.

Q. You belong to the SIU; don't you? A. Not altogether. I still owe money—

Q Do you belong to the both unions? A. I don't belong to the CIO now.

Q. You belong to the SIU? A. That's right.

Q. How long do you belong to the SIU? A. I don't belong altogether. I still owe $10 for my initiation.

Q. Have you quit the NMU? A. Yes, sir.

Q. When did you quit that? A. Last winter.

Q. Did you sail on any NMU ships last year? A. No, sir. I tried to get them, but I couldn't get on.

Q. Now, the Olds had Negroes aboard the ship when you were on them? A. All Negro galley.

Q. The whole galley was Negro. And Captain Murray had been shipmates with Negroes; hadn't he? A. Yes; they thought the world and all of them.

Q. Sure. And this chief cook had been with him a long time; hadn't he? A. Yes, sir.

Q. He has to give them orders; doesn't he? A. Yes; that's right.

Q. Wasn't the remark that he didn't like to give orders to Negroes a little unusual when he had been shipmates with them so long?

Mr. Belkin: Objection.

A. He meant like watchmen and wheelsmen.

Mr. Belkin: All right. Let it go.

Q. (By Mr. Hinslea): That is all he said, that he would sure hate to pass out orders to colored watchmen and wheelsmen? A. Yes.

Q. Now, the chief, you say that he said he didn't like Negroes aboard this ship, because you had to live with them? A. Yes; and he said he didn't like the Union for that reason, because a Negro has the same right as a white man.

Q. Well, he was living with Negroes aboard the ship; wasn't he? A. He was. He brought that right up in the mess room where they was working.

Q. Still he was living with them? A. He was.

Q. Now, when did you become organizer? A. The day after Shartle got off.

Q. Did he ask you to become organizer? A. The man in Conneaut asked me to become organizer.

Q. And you didn't get off the ship until when? A. June 28th.

Q. How do you remember these dates so well, Mr. Vogel? A. I have a discharge in my pocket, in my uniform coat over there.

Q. Oh, you have looked at your discharge? A. Yes.

Q. How do you remember the date of the 19th of June, of the mate finding out you were an organizer? A. Because it took us six days to make a round trip. I got off June 28. It was either the 19th or 20th.

Q. Where was the ship? A. Conneaut.

Q. Well, now, from the—you were organizer then from the 24th of April until the 28th of June? A. I was.

Q. And during that time did you pass out literature to the crew? A. I did.

Q. Did you give any to the officers? A. No.

Q. You never gave the officers a Pilot? A. No, sir. They got ahold of them though. We put them in the recreation room, and they found them.

Q. Beg pardon? A. We had them in the recreation room, and they found them.

Q. They like to read them as well as you did? A. Yes; they did.

Q. There was no harm in that; is there? A. No.

Q. Did you get men to join as they got on the ship? A. I did.

Q. You made no secret about that. You made no secret about the fact that you were an organizer? A. No.

Q. Whose watch were you on? A. The first mate's watch.

Q. Well, isn't your testimony, Mr. Vogel, that from the 24th of April to the 25th of June that you never talked about the Union in front of the first mate—or to the 19th of June, you never talked about— A. I never did; no.

Q. You never did. Now, even the Olds, at 640 feet long, is a pretty small ship as far as men living together; isn't that right? A. Yes.

Q. And many, many nights, a dark night on Lake Superior and Lake Huron, you sit up in the pilot house

with the first mate and wheelsman; didn't you? A. That's right.

Q. Now, the election was about the 6th of June? A. That's right.

Q. And subsequent days. Now, is it your testimony that prior to the 6th of June when you were an organizer, and getting ready for this election, that you didn't discuss the Union in any way up in that pilot house from two o'clock in the morning until six o'clock in the morning? A. No, sir.

Q. Never? A. No.

Q. Kept it a deep secret? A. Yes.

Q. Did any of the officers know that you were an organizer on that boat? A. I believe they did, because they have a loudspeaker on that boat and they can hear as well as they can talk over that loudspeaker, and give orders all over the ship. So, no doubt, when some of those men was talking to me there, they overheard it in the pilot house with that loudspeaker on.

Q. That is the loudspeaker back aft? A. Yes.

Q. When the mate calls to the captain how much his stern is off the dock, and that sort of thing? A. Yes.

Q. Did you have your meetings back in the fantail? A. Some of them, and some of them I had forward. They also have a loudspeaker there.

Q. That knowledge then would be conveyed to them before the election; wouldn't it, June 6th? A. Yes; no doubt they knew about it.

Q. So the first mate knew about it before the 19th of June; didn't he? A. He probably did. I don't know.

Q. And still you rode the boat until the 28th of June? A. Yes.

Q. Now, about this splicing, did you and Shartle start this splicing together? A. No. Shartle started it, and about 10 minutes later I came out and helped him with it.

Q. Why did you come out and help him? A. Shartle asked me to give him a lift on it.

Q. Now, isn't it a fact that he couldn't splice as well as you could? A. I don't know.

Q. Give me your opinion, Mr. Vogel.

Trial Examiner Leff: Did you finish your answer?

A. (Continuing): I have been 20 years on the lakes. I have been doing an awful lot of splicing. It would take a pretty good man to beat me.

Q. (By Mr. Hinslea): And splicing the cringle on a tow line is a tough job? A. It is.

Q. It is harder than making a short splice? A. Yes; because it has to be real tight.

Q. How long were you helping Shartle before the mate came in? A. Ten minutes.

Q. Were you actually doing it or showing Shartle how to do it? A. No; him and I were working together on it.

Q. Was he running it, and you just assisting him? A. Well, we put in the three tucks together, and we started to tighten them up on the machine, on the winch, making them pretty tight. We pulled up all the ends.

Trial Examiner Leff: Did the first mate tell you to stop, too?

The Witness: Yes; he stopped me until I came on watch. Then he told me to complete the job.

Q. (By Mr. Hinslea): Well, you were helping Shartle when you were off watch; weren't you? A. Yes, sir.

Q. Are you supposed to get overtime for that? A. No; I wasn't getting any. I happened to be up at the time. I didn't—

Q. Nobody ordered you to do that off watch; did they? A. No.

Q. You just helped Shartle because he was your roommate? A. Yes.

Q. And then the mate waited until you were actually on watch, and then it would become a part of your job? A. Yes, sir.

Q. And he selected you, because you knew how to do it? A. Yes.

Mr. Hinslea: That is all.

Q. (By Mr. Hinslea): Now, the only work you did with Shartle was painting on the stage during the fit-out? A. Yes. Him and I painted together, and we did a little scrubbing together during the start.

Q. During the fit-out? A. Yes, sir.

Q. Is that the outside of the hull? A. No; we painted over the side on the hull. But we scrubbed the white work on the inside.

Q. Now, this scrubbing, who is in charge of that? A. The third mate, I believe.

Q. That was scrubbing the cabins? A. Yes, sir.

Q. That was merely a matter of taking a broom and using soogy, and washing it down with water? A. Yes.

Q. When you worked with Shartle did you work on the staging on the outside of the hull? A. Yes.

Q. Were you on the same staging? A. Yes.

Q. You were on one end of the plank, and he was on the other? A. Yes.

Q. How far away were you while you were painting? A. About eight or ten feet.

Q. When you paint a hull you are not concerned much with brush marks and that; are you? A. We couldn't be then, because it was hailing and raining. Half of the paint didn't stick on. It looked bad after we got through.

Q. As a matter of fact, you painted hulls with a big whitewash brush, with a long stick. You have done that; haven't you? A. We have. But we didn't use no man helper on that job.

Q. But, I mean, it isn't a difficult job to paint the hull of a ship? A. No.

Q. And deckhands do it as well as watchmen? A. No; they wouldn't let them go over the side.

Q. But haven't you seen deckhands painting on the job? A. Yes; I have.

Q. What I am getting at is that it isn't a difficult job. A. We had one boy on who was a deckhand; but the rest, they wouldn't let them on the stage.

Q. That is the only work you did with Shartle; and you were on the first mate's watch, and he was on the second? A. That's right.

Q. So when you were working he was sleeping? A. That's right.

Re-Direct Examination.

Q. (By Mr. Belkin): Mr. Vogel, is that splicing job difficult, or is it relatively simple? A. It is easy when you know how, but it is difficult to get it tight to stand it.

Q. Generally who does that splicing? A. It is usually between an able seaman and the mates.

Q. Am I to understand then that the general practice is that the mates do the cringle splicing?

Mr. Hinslea: He didn't say that.

Mr. Belkin: I am asking whether it is so or not.

Q. (By Mr. Belkin): Well, is it the general practice for the mates to make this cringle splice? A. No; I have made them just as often as the mates have aboard a ship.

Q. Do the mates make them? A. Yes.

Q. Regularly or not? A. Well—

Mr. Hinslea: Well, now, is he trying to impeach his own witness?

A. (Continuing): Sometimes they pass it on to the able seamen.

Q. (By Mr. Belkin): Now, how many men normally are used to complete this splice and bring it up tight, as tight as necessary? A. I had one helper and myself.

Q. It is generally two—a two-man job? A. That's right.

Q. And when Shartle came to you and asked you for assistance, was he doing that alone or did he have another man helping him? A. He had a helper with him.

Q. Who was that helper? A. One of the deckhands.

Q. Was he able to assist in this splice? A. No. He was just able to help, but he wasn't able to do it. He didn't understand it.

Q. It was for that reason Shartle asked you to assist, and that is the reason you gave him your assistance? A. Yes.

Mr. Hinslea: I will object to that question.

Trial Examiner Leff: I will sustain that objection.

Q. (By Mr. Belkin): All right. Did Mr. Shartle explain to you why he wanted you to help him on the splice? A. No.

Q. He just asked you to help him? A. Yes, sir.

Q. What was your reason for helping him? A. Because I didn't have anything else to do. I just got through with supper, and I didn't want to lay down with a full stomach.

Q. Now, when you made the splice, after the mate had told you to stop, and then you went back, as you have testified, did you do it yourself? A. Yes.

Q. You did the splice yourself? A. No; I had a helper.

Mr. Belkin: That is all.

RE-CROSS EXAMINATION.

Q. (By Mr. Hinslea): It is necessary in this kind of a splice to have a helper; isn't it, Mr. Vogel? A. Yes; it is.

Q. The helper doesn't necessarily know how to splice, if you do? A. No. He just does what you tell him.

Q. An A.B. seaman, a watchman or wheelsman is ordinarily expected to know how to splice; isn't he? A. Yes.

Mr. Hinslea: That is all.

Trial Examiner Leff: I am not quite clear on this.

EXAMINATION.

Q. (By Trial Examiner Leff): How did you happen to leave the ship in 1944? A. The Olds?

Q. Yes. A. Well, it was through request of the mate mostly that I left.

Q. Well, did you quit, or were you discharged? A. I was discharged.

Q. When did you leave the ship—how soon after the mate spoke to you about the fact that you were a trouble-maker because of your Union activities, did you leave the ship? A. A matter of about a week. A week's time.

Q. Was that when you first hit the next port? A. No.

Mr. Belkin: If the Examiner please, the witness has testified—

Trial Examiner Leff: Well, I just want to get it clear in my mind.

A. (Continuing): It happened in Conneaut where the mate found out that I was an organizer on there. It happened in Conneaut up where I got off.

Q. (By Trial Examiner Leff): You mean after you had completed the full trip? A. I had completed the full round trip.

Trial Examiner Leff: All right.

RE-DIRECT EXAMINATION.

Q. (By Mr. Belkin): Mr. Vogel, since the Examiner isn't quite certain as to what occurred, when the mate told you to pack up and get off, what was your response to him? A. The only thing I told him was that we only had an hour before sailing time, and I couldn't pack up my clothes in an hour's time and get off.

Q. That is the reason you didn't leave at that moment? A. Yes.

Q. But on the next—the following trip—when you came back and hit that port you got off? A. I was ready.

RE-CROSS EXAMINATION.

Q. (By Mr. Hinslea): Now, Mr. Vogel, when you finally got off, the mate didn't tell you then to get off? A. No. When we came back into port, why, he didn't want me to get off then.

Q. He didn't want you to get off then? A. I just figured he wanted me to make another trip, and he would bar me after that for some other purpose.

Q. In other words, when you were ready to get off he didn't want you to? A. No. I didn't want to. I told him my clothes were ready to go, and I was going with them

Mr. Hinslea: That is all.

Mr. Belkin: That is all.

(Witness excused.)

HARRY EDWARD JONES, a witness called by and on behalf of the National Labo. Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Q. (By Mr. Belkin): Will you give us your full name and address, please? A. Harry Edward Jones, 782 West River, Elyria, Ohio.

Q. Were you employed by the Pittsburgh Steamship Company last year, 1944? A. 1944 I was.

Q. When did you begin your employment, and when did you conclude your employment? A. I concluded it May 28th. I believe I started in March, to be exact.

Q. What ship did you sail on? A. I sailed on the McGonagle.

Q. What was your job aboard the ship? A. I was hired as—when I first started I got on as just a wiper.

Q. What other job did you have? A. Well, after I was on about a week they found out they didn't have no fireman, so I was promoted to a fireman.

Q. Do you recall the names of the licensed personnel of that ship? A. Yes; I believe all but one. The chief

was Patty McDonald, and the first assistant was Harvey Kanguis, and the second assistant was Benson. The third one I just—Charles something.

Q. Do you know the name of the captain of the ship? A. Penzenhagen.

Q. This captain was Penzenhagen? A. I believe that is it. You can pronounce it any way you want to.

Q. Do you remember the names of the first and second mate? A. I don't remember the names forward, I was in the after end. I took care of my job.

Q. When you boarded the ship, were you a member of the NMU? A. No; I wasn't.

Q. Did you at any time thereafter join the NMU? A. Yes; I did.

Q. When was that? A. Well, I believe it was—I'd say about three weeks after I boarded.

Q. During your stay on the McGonagle did you at any time hear any of the supervisory officers or the licensed personnel of the ship discuss the Union? A. Oh, I did the—I did time and again. But I never paid much attention to it, because that was their talk, and I wasn't involved.

Q. Now, can you tell us the names of the officers whom you heard discuss the Union? A. Yes; Benson, second assistant engineer.

Q. Was there anyone else? A. Oh, not exactly that I know of.

Q. Well, directing your attention for the moment— A. Well, just a moment. There is only one thing that Penzenhagen remarked to me as I was going ashore once.

Mr. Ray: That is the captain?

The Witness: That is the captain.

A. (Continuing): He met me as I was going ashore, and he said, "Where are you bound for, the Union hall?" I told him I didn't think it was any of his business where I was bound for. I wasn't under his jurisdiction when I was off the ship.

Q. (By Mr. Belkin): When did this occur? A. Well, this occurred in, I believe, Gary, Indiana.

Q. Do you remember what time of year it was? A. Well, it was fit-out. It was just after we started out, about the first trip, I believe it was.

Q. What month would that be? A. You kind of have me there. It is over a year ago.

Q. Was it March or April when you started? A. I started in March.

Q. So it would be about that time? A. I think it was about the last of March or the first of April. I am pretty sure of that.

Q. Was anyone else present at the time? A. Well, he was walking with somebody else, but I didn't pay no attention at the time. It was just an occasional remark that he made, and I just took the source that it came from.

Q. Now, directing your attention to the conversation at which you testified you were present when the second assistant, Benson, spoke concerning the Union, can you tell us when and where that occurred? A. Well, it occurred in the galley on the McGonagle on one of the ten to two watches. He happened to be my officer in charge. I was under him.

Q. Do you recall just when that conversation took place in reference— A. I don't remember the exact date, if that is what you mean.

Q. To the best of your recollection. A. Well, I believe it was about around April 27th. I believe right around then.

Q. The latter part of April? A. The latter part of April.

Q. Who else was present? A. Well, there was quite a few fellows in the forward end that was coming on watch.

Q. Can you name them for us? A. No; I couldn't. I never care to know very many of the fellows.

Q. Well, can you tell us what if anything the second assistant, Benson, said in that room at that time? A. Well, he just wanted to know what I thought I was going to gain out of the Union being aboard ship, and how long I would last if they did come in, or if they went off, how long I would last aboard that ship.

Q. Did you reply? A. Yes. I told him I didn't think it was any of his damn business.

Q. Was anything further said? A. No; I—well, he thought I guess that it was sort of smart for him to make a lot of wisecracks.

Mr. Ray: I object to what this man thinks the second assistant thought.

Trial Examiner Leff: Sustained.

The Witness: Well, he thought out loud.

Trial Examiner Leff: Well, what did he say?

The Witness: He told me he didn't like the idea of having a bunch of niggers sleeping around him. I told him I knew quite a lot of colored people that were all right. They were pretty nice neighbors. The fellows sailing on the coast, I believe, they sleep with them there, too, and there is no discrimination.

Q. (By Mr. Belkin): Was there anything further said by anyone present at that time? A. Not at that time.

Q. Was there any further conversation involving the Union in which second assistant Benson voiced his opinions? A. Just the time when he told me. That is all I know.

Q. Do you know who was the Union organizer aboard the McGonagle? A. Walter Herrick.

Q. Did Walter Herrick call meetings of the men in the course of his organizational activities? A. Yes; he did after hours.

Q. And did you attend any of those meetings? A. Yes; I did.

Q. Did any member of the licensed personnel appear at any of your meetings? A. Not one.

Q. Did any of the licensed personnel at any time come into your meetings for the purpose of attending it? A. No.

Mr. Ray: He has just answered that.

Trial Examiner Leff: Well, go on.

A. (Continuing): I will say they came before it. When we was getting ready to go up to the forward end they came in and listened and discussed it with Walter.

Q. What officers? A. I think the first assistant.

Mr. Ray: I object to counsel saying that the officers attended the meeting in lieu of the witness' statement. They didn't attend.

Mr. Belkin: I am willing to reframe it.

Trial Examiner Leff: He said they came there before the meetings.

Mr. Belkin: I am willing to reframe it. I think the objection is certainly proper.

Q. (By Mr. Belkin): Mr. Jones, before the meeting, when the officers spoke to the men, were you present? A. Yes; I was laying in my bunk.

Q. Do you recall who the officers were? A. Well, the names?

Q. Yes. A. Harvey Kanguis.

Trial Examiner Leff: What is his title?

The Witness: He was a first assistant engineer.

Q. (By Mr. Belkin): Were you present at the time? A. Sure. He used to come to see me.

Q. Can you tell us what if anything Harvey Kanguis said? A. I don't remember now. He used to talk to Walter quite a bit. I believe Walter was on his watch at the time.

Q. All right. Now, Mr. Jones, what was the normal place of meeting, or the regular place of meeting? A. Well, sir, we didn't have any regular place. I guess we were forbidden all over the ship, outside of, I believe, the captain gave Mr. Herrick permission to use the dunnage room.

Q. Who forbade you to use other places of the ship? A. The captain did.

Q. When did he do this? A. Well, Walter—he asked the captain if he could hold Union meetings. The captain gave him permission to hold them.

Mr. Ray: I object to this unless this request was made in the witness' presence.

Trial Examiner Leff: Was it made in your presence?

The Witness: This request to use it?

Trial Examiner Leff: Yes.

The Witness: It wasn't in mine.

Trial Examiner Leff: You got that information from some other source?

The Witness: Walter.

Trial Examiner Leff: All right. Let Walter testify about it. Objection sustained.

Q. (By Mr. Belkin): Now, you said the captain forbade your meeting in other places, but were you present when the captain made such a statement? A. Yes; I can tell of one instance.

Q. Tell us about it, please. A. Walter came and got the other fellows, and said, "We will hold a meeting in the

mess hall." We all went to the mess hall. We didn't no more than just get inside the door, and in walked the captain. He asked Walter—I guess everybody present, the way he scanned everybody's face, and he said, "What in hell is going on here?" Walter said, "Why, we are holding a meeting, sir." He said, "All of you get to hell out of here and stay out of here." He said, "If I catch you in here again"—he pointed at Walter—"I will throw you out bodily." I didn't think that was right.

Q. (By Mr. Belkin): This was in the mess hall? A. That's right.

Q. Do you recall the names of the people who were present? A. They were practically all there, sir. The forward end and after end.

Q. What time of day was it? A. I imagine it must have been around 7:30, 8:00 o'clock.

Q. Were these men on or off watch? A. Off watch.

Q. Was it your custom to eat and talk in the mess hall? A. The only time we were allowed in there that I know of was just to eat. That is the only time I know of.

Q. Did the men ever go into the mess hall just to sit around and talk? A. No. Mr. Penzenhagen wouldn't allow it.

Q. Can you tell us what time of year, or what time—what voyage it was that Mr. Penzenhagen came in and ordered you fellows out of the mess room? A. It was on the trip to Two Harbors.

Q. When did that occur, to the best of your recollection? A. It must have been in April.

Q. Did any of the licensed personnel at any time discuss Mr. Herrick with you? A. No—yes; Mr. Benson one day mentioned how much money Mr. Herrick was going to pull down for his Union activities aboard ship. He specified $35 or $40 that he was getting from the Union for his activities aboard ship, organizing those fellows.

Q. Was anyone else present at the time he made that statement? A. Well, at the time there was, I believe, Jean Lovely, who was sitting outside. Let me see—somebody else, I know, was sitting out there at the time, too. This is on the starboard side of the ship, after end.

Q. Would you tell us when that conversation occurred? A. You mean the exact date?

Q. To the best of your recollection. A. It was around 7:30 or eight o'clock.

Q. Fixing it either as to voyage or time of the year. A. Well, it was sort of a late voyage.

Q. You say that would be in May? A. Yes; I believe it was.

Mr. Belkin: You may cross examine.

CROSS EXAMINATION.

Q. (By Mr. Ray): Mr. Jones, it is true that these conversations between the officers and the engineering department on the vessel, as you stated on your direct examination, were simply discussions between them, and you weren't much concerned about it; that is true? A. Well, explain yourself, just what you mean now.

Q. No. I don't have to explain myself. A. Well, I am not going to say something I know is going to jeopardize myself.

Q. No. I am just asking you what the situation is. If you are afraid of the question— A. Well, now—

Trial Examiner Leff: Now, just a moment. You testified on direct examination that you weren't very much interested in these conversations between the licensed men. What did you mean by that?

The Witness: Well, I will tell you, for one thing, the licensed officers, I guess they found out I get pretty well provoked if they spoke about the Union to me, after I belong to it. They got quite a kick out of ridiculing me that I belonged to it.

Q. (By Mr. Ray): That isn't what you stated on direct examination. You stated on direct examination that these discussions were between the officers, and, therefore, you didn't pay much attention to them. Now, you said that on direct examination. A. You mean when they were talking to me in the mess hall, or when they were talking among themselves?

Q. When they were talking among themselves. A. No.

Q. You didn't pay attention? A. No. Just what I heard.

Q. How is it you remember with particularity the various things you remember so easily now? A. Do you want me to tell you?

Q. Yes. A. I was sitting right outside where everybody was at, and they were standing right alongside of me.

Q. You were paying attention; weren't you? A. That's right.

Q. Now, at the time the captain came back to the mess hall and forbid the holding of the meeting in the mess hall, he already told you you could have it in the dunnage room? A. Not that I know of.

Q. He already designated the place? A. Mr. Herrick was organizer. He told Mr. Herrick where he could go.

Q. You don't know that Mr. Herrick had been told that he could go to the dunnage room before? A. That I don't know.

Q. Now, at the time this meeting was being held in the mess room, was there any work going on in the galley? A. You mean before we came in?

Q. In other words, at the time of evening when the work was normally going on in the mess room by the members of the galley crew, cleaning up? A. No. That was all through then. It was all cleaned up. The galley, that was secured for the night.

Q. Where was the midnight lunch? Was that out? A. No, sir; the midnight lunch didn't come out until 10 o'clock. About a quarter to 10.

Q. Who put that on? A. Explain what you mean. What do you mean, who put it on? Who put what on?

Q. Who put the midnight lunch on?

Mr. Belkin: Mr. Examiner, what relevancy—

Trial Examiner Leff: Well, there is some testimony that on another ship they didn't have any midnight lunch.

Mr. Ray: That isn't the proposition at all. Let me ask—

Trial Examiner Leff: Will you just listen to the questions and answer them. You are not supposed to get yourself involved in conversations.

What were you saying, Mr. Ray?

Mr. Ray: The point I want to find out about is and the purpose I have asked it is this: I want to find out what the reason was, if there was a reason, why they

weren't permitted to use the mess hall. Whether it was because they already had a place designated, or whether there was work going on in the mess hall with which the meeting would interfere.

Mr. Belkin: I will withdraw my objection then. I am sorry.

Q. (By Mr. Ray): You tell us whether that meeting you had there was interfering with any work that was going on by the galley crew, with their cleaning up or doing anything else. A. No; it was secured for the night.

Q. I thought that was clear. How long have you sailed, Mr. Jones? A. You mean years?

Q. Yes. A. Well, to tell you the truth, since 1928.

Q. Is the mess room the normal place on the vessels you have been on to hold meetings, or do you have to go to your quarters, or other places, or out on the fantail? A. Well, there was no Union—

Mr. Belkin: I object to that question as being twofold. It seems to me that it is improper in its present form. I have no objection to the purpose of the question, but I think the witness will find it difficult to answer that one way or the other, until it is split.

Trial Examiner Leff: Well, Mr. Ray wouldn't mind splitting the question. Go ahead.

Q. (By Mr. Ray): I will ask you first of all, Mr. Jones—this is a split question. This is the first part. Where is the normal place to hold a meeting on the vessels you have been on, meetings of the members of the crew involving business of their own? A. We never had no place. There is no place designated.

Q. All right. Then this is the second part: Has it been the common practice on the vessels you have been on to hold those meetings in the mess room? A. No; not that I know of.

Q. Where do you play poker on board the ships? A. I am sorry, sir, but I never played poker aboard any ship.

Q. I mean, where did the crew play poker? A. In fact, I will tell you, the captain doesn't allow poker to be played on the ship.

Q. On any of the ships? A. That I know of. I wouldn't say every ship. Just the ships I have been on. No captain allows it.

Trial Examiner Leff: Does the Board contend that is an unfair labor practice?

Mr. Ray: That is all.

Mr. Belkin: That is all.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: We will have a short recess.

(A short recess was had.)

Trial Examiner Leff: The hearing is in order. Call your next witness, please.

WALTER LINDEN HERRICK, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?

The Witness: My name is Walter Linden Herrick.

Trial Examiner Leff: Your address?

The Witness: 6142 Mesa Avenue, Los Angeles, California.

DIRECT EXAMINATION.

Q. (By Mr. Belkin): You were employed by the Pittsburgh Steamship Company, were you not, Mr. Herrick? A. I was.

Q. What was the term of your employment with that company? A. From the 28th of—March, 1944, until the 28th of June, 1944.

Q. What was your job on board ship? A. I was an Oiler aboard the ship.

Q. You sailed on the McGonagle, I understand? A. On the McGonagle.

Q. As I understand it from the testimony of the previous witness the officers aboard the McGonagle were Captain Penzenhagen, Chief Engineer McDonald, First Assistant Engineer, Harvey Kangius, and Second Assistant Engineer, Ray Benson; is that correct? A. Yes.

Q. Do you recall any of the others? A. I don't recall any of the other officers' names except the Chief Mate's first name was Bob. That is all I ever heard anyone ever call him outside of Mr. Mate.

Q. When you boarded the ship were you a member of the N.M.U.? A. I was.

Q. Were you appointed organizer for that Union? A. I was an organizer on that ship.

Q. Did you engage in the organizational campaign of the Union preceding the June election? A. That's right.

Q. What did you do? A. I talked to members of the crew about the program of the Union on the Lakes at the time. I answered any and all questions that I could regarding National Maritime Union and its program. I brought aboard the ship our official organ, the Pilot, whenever I could get ahold of it in Port. And I also signed up members in the National Maritime Union on the ship.

Q. Did you distribute literature on the Union among the ship Mates? A. I did when I could get a hold of it.

Q. Did you distribute the pamphlet: "N.M.U. Fights Jim Crow"? A. No; I didn't.

Q. Did you see such a pamphlet aboard the ship? A. I did; yes.

Q. Did you bring it aboard? A. No; I didn't bring it aboard.

Q. To your knowledge did any member of the N.M.U. bring it aboard? A. To my knowledge no member of the N.M.U. did.

Q. I will show you what has been marked as Board's Exhibit 2. Have you ever seen that before, Mr. Herrick? A. Yes; I have.

Q. Where did you see it? A. I saw this, a copy of this letter aboard the William A. McGonagle. I saw a copy of this lying on my bunk.

Q. Did you see any other copies of that Exhibit? A. I saw other copies as well.

Q. Where were they? A. They were in the Seamen's —I saw this in the afterend crews—in the Crew's quarters, several of them.

Q. I will now hand you what has been marked Board's Exhibit 3, and ask you if you ever saw that before? A. Yes; I have seen this before.

Q. Where did you see it? A. Also on the McGonagle, and also on my bunk.

Q. When did you see it, Mr. Herrick; do you recall? A. I believe it was in the first week of June.

Q. Was that before or after the Union election? A. Before the election.

Q. I now hand you what has been marked as Board's Exhibit No. 4, and ask you if you have seen that? A. Yes; I have. Yes.

Q. Where did you see it? A. I saw this also on my bunk. It was in an—as I recall it—it was in an envelope addressed to me, that is, addressed to my position.

Q. What was your position? A. Two to six Oiler. It was laying there with some other mail that I had.

Q. Do you recall when you first saw that aboard the ship? A. I don't recall exactly; but I think it was toward the end of May or the first of June. I don't remember the exact date.

Q. Did you see any other copies of this? A. I saw other copies.

Q. Other than this Exhibit or pamphlets? A. I saw other identical copies.

Q. Where were the other copies? A. The other copies were in the Fireman's room. As I remember there was two or three of them in the Fireman's room on the same day that I saw mine.

Q. I understand you held meetings with the men aboard the ship? A. That's right.

Q. Did you ever inform the Captain of these meetings? A. I did; yes.

Q. Did the Captain discuss with the men any matters that they had previously discussed at the meeting, to your knowledge? A. The Captain did; yes.

Q. What if anything did he say? A. The Captain told the men that if the Union were to win the election, that the men would have no more say as to whom they would ship with. The Captain also told the men that in the event the Union won the election, that they would no longer be able to hold lookout on the bridge, in the wheelhouse, that is, in heavy weather, they would no longer be able to have coffee on watch. These concessions, he said he gave to them himself. With the Union—were the Union to come in they would no longer be permissible. They would also have to work from bell to bell, and their work would be continuous right along. There would be no rest periods or anything of the sort. It would be strictly bell to bell work.

Q. During your voyages aboard that ship, did this occur—when did this occur? I want you to fix the time for us to the best of your recollection, either by voyage or by month, if you can? A. The time that the Captain made that statement?

Q. Yes. A. The time the Captain made that statement, to my recollection, I should say around the middle part of April, 1944. This statement was made in the deck-watch's room around from—from approximately 8:30 at night until after midnight.

Q. Was this just after a meeting? A. It was just after a meeting, that same evening.

Q. Prior to your appearing on the stand, Mr. Herrick, there was testimony by Harry Jones, a Fireman aboard the same vessel, and a shipmate of yours, as I understand, in which he stated that certain comments had been made concerning you by the Second Assistant, Benson. Did this statement ever come to your attention while you were on board the ship? A. Yes, sir; it did.

Q. Did you discuss that statement with the Second Assistant, Benson? A. I did.

Q. Will you tell us when that occurred? A. As well as I can recollect it occurred in the latter part of May, I should say, approximately the 20th of May, or thereabout. It first came to my attention when Mr. Jones told me about it. I went and saw—I saw the Second Assistant, Benson, and I asked him if it were true that he had said that. He didn't answer me directly. To the best of my recollection, he said that "Harry Jones is a very excitable person. He blows up everything out of proportion. I have nothing against unions, but I don't see where the organization of this ship is going to bring the men any better conditions. That is my personal opinion." I can't recall any direct statement but it was a very evasive answer. He didn't deny that he had said that.

Q. Now, I believe you men aboard that ship voted on or about June 6 in the election, did you not? A. Yes; we did.

Q. Now, directing your attention to the period after the election, did you at any time discuss the election or the results of it with any of the officers aboard your ship? A. Yes; I did.

Q. With whom did you hold such discussion or conversation? A. Well, there were various occasions directly after the election where there was general discussion between practically everyone on the ship and myself regarding the election. I can't recall the dates exactly, but the following two weeks after the election was held.

Mr. Belkin: I was interrupted by counsel, if the Examiner please, I would like to have the last question and answer read.

(The last question and answer was read by the Reporter.)

Q. (By Mr. Belkin): Let's see if we can't narrow this down, Mr. Herrick. Specifically did you at any time discuss union matters with the Captain? A. I did; yes.

Q. When did this conversation take place? A. This conversation took place around the middle of June, I'd say, anywhere from the 12th to the 15th. I don't recall, but somewhere within those dates.

Q. Where did it take place? A. It took place in the Fireman's room aboard the S. S. McGonagle.

Q. Can you tell us if anyone else was present? A. There were others present. Five or six others.

Q. Do you recall who they were? A. Yes; I recall some of the names. Present at that time were: Gerald Ludwig, Fireman; also present were August Shindler, Fireman; a coalpasser by the name of Robert Skistmas, S-k-i-s-t-m-a-s, as I recall it; also present was a Fireman by the name of Karol Bekier, K-a-r-o-l B-e-k-i-e-r; and several others. But those I specifically remember.

Q. You don't remember the names of these others? A. I don't remember. I can't off hand remember.

Q. Will you tell us to the best of your recollection what if anything the Captain said to you? A. Yes; the Captain entered the room and spoke directly to me. He said, "I came in to thank you very much for the article you had written about me in the Pilot. I think this article was incorrect; and both you and the Union better watch your steps, because if you don't you can get into plenty of trouble making such accusations as this." I asked the Captain what he meant by that. The Captain said that the article in the Pilot that he was referring to was merely a friendly conversation, as he put it, between himself and

the man at the wheel, the man named Fred Young. It wasn't as I had alleged, a menace to navigation.

Q. What if anything did you say? A. I told him that I had been—that I had been told by the wheelsman, Fred Young, and also by John McDonald, the wheelsman, who relieves Fred Young, that the Captain had made a number of anti-union statements to the wheelsman while he was on watch, entering the Port of Duluth in a heavy fog. I told him that Fred Young and John McDonald had told me that the Captain had said if the Union came into being, that is, if the Union won the election, that the men would have no more say so with whom they sailed; also they would be paying for—what he loosely called a bunch of racketeers. I can't recall exactly, but I think those are the terms he used.

Q. What did the Captain say to you? A. He said he was only talking to Fred Young in a friendly way. He had known him before on a ship, and that was all he said at the time. He further said that anyway he hadn't spoken against the Union anywhere near so much as some of the Mates. He didn't specify who the Mates were. That ended the conversation as I recall it.

Q. You testified concerning a certain article that seems to have been published in the Pilot. What connection did you have with that article? A. That article was written in the Pilot—

Mr. Ray: We object to this question unless the relevancy is pointed out.

Trial Examiner Leff: Well, let's see the article. Do you have it here?

Mr. Belkin: No; we don't. Since the Captain criticized Herrick for it, as we maintain, I think an explanation of the incident—

Trial Examiner Leff: I think we should have an explanation to clarify the record. But I think the article itself would clarify it better, after all.

Mr. Ray: Does the Board contend that the criticism of Herrick for writing an article constitutes an unfair labor practice?

Mr. Belkin: But the other remarks certainly do. And in a way, I think may well be—it may well be said that the criticism of Herrick in the presence of the crew for

what he had written in the journal was certainly coercion. It was certainly intimidation of him, and, therefore, an unfair labor practice.

The Witness: The Captain also made a statement—

Trial Examiner Leff: Wait a minute.

(The last question was read by the Reporter.)

Trial Examiner Leff: I will overrule the objection.

Mr. Belkin: I may say this, before we go further, I will make every effort to obtain the article.

The Witness: I merely wanted to add that in the conversation between the Captain and myself—

Trial Examiner Leff: You are not being asked that. The only question before you now is: what connection did you have with that article that appeared in the Pilot?

The Witness: I had written in a report to the Union. The report of John McDonald and Fred Young and two wheelsmen aboard the McGonagle at the time, who both heard and told me the story involved—

Mr. Ray: I object to this testimony of what was told to him. If it is offered for the purpose of proving any more than those statements—

Trial Examiner Leff: It isn't offered for the purpose of proving what statements were made.

Mr. Ray: Or what the Captain said.

Trial Examiner Leff: Is that the purpose of your question?

Mr. Belkin: No; I wanted a clarification of this incident which seemed to have been the basis of a discussion between the Captain and Herrick.

Trial Examiner Leff: I think that needs clarification.

Q. (By Mr. Belkin): Will you go on, Mr. Herrick?

(The last answer was read.)

Q. What was the story involved? A. You want me to explain that?

Mr. Ray: I object.

Trial Examiner Leff: I will sustain that objection.

Mr. Belkin: On what basis. If it is on the basis of hearsay, I would like to call your attention, Mr. Examiner, that this is certainly the type of evidence that is permissible before the Board.

Mr. Ray: Cite cases—

Trial Examiner Leff: You don't have to cite cases. I am sustaining the objection.

Mr. Belkin: I would like to be heard before you make a final ruling.

Trial Examiner Leff: You can have an exception. You can argue for the court. You want to prove what was said before these other people; is that your purpose?

Mr. Belkin: That wasn't my original purpose. But since it is here, I would like to get it in.

Trial Examiner Leff: Is that your purpose?

Mr. Belkin: My purpose is to clarify the subject brought up by the Captain before Herrick and his shipmates. Herrick has testified the Captain said that he had done him an injury by publishing it. I would like to know just what happened in that wheelhouse, to clarify this conversation.

Mr. Ray: He can't prove what happened—

Trial Examiner Leff: Will you let me talk for a moment. This witness wasn't present at the time; was he?

Mr. Belkin: Granted.

Trial Examiner Leff: The only information he would have is hearsay. The objection is sustained.

Mr. Belkin: I would like to be heard.

Trial Examiner Leff: I have ruled on the objection. Please proceed.

Mr. Belkin: Well, if the Examiner will permit, I don't want to be obstinate in this regard, but it seems to me if you overruled me on this objection, at least you ought to afford me the courtesy of citing the cases involved, even though you do know them. I would like to have them in the record.

Trial Examiner Leff: Go ahead and cite them.

Mr. Belkin: That is all I ask. I am calling the attention of the Trial Examiner to the *Service Wood Heel Case,* 124 F. (second) 470, and more particularly to the *Remington Rand Case,* 130 F. (second) 919, in which Judge Frank said: Proceedings before the Board on hearsay testimony, where it is the kind on which reasonable men are accustomed to rely in serious affairs is admissible and may be the basis of valid findings and valid order made by the Board. For it is "only convincing" not lawyer's evidence which is required such as a reasonable mind might accept.

I think a fair test of hearsay on a matter like this before the Board is whether or not it is such testimony as the Respondent has an opportunity to meet. I think this testimony is of such character.

Trial Examiner Leff: Why don't you produce the witnesses who have direct knowledge of it?

Mr. Belkin: This is a steamship case, as your Honor well knows. One of the difficulties of the Board in this case was to separate much of the hearsay evidence, which they did, which we would not give counsel for the Company an opportunity to meet. I have a good many affidavits of men who are scattered on the seven seas. It is impossible to produce them.

Trial Examiner Leff: May I suggest that you make an offer of proof for the record, so your position will be clear?

Mr. Belkin: The Board wishes the record to show that if the testimony just rejected had been admitted, it would have shown that the Captain of the ship, speaking to McDonald and Fred Young in the wheel house of the ship, on or about May 5, on a very foggy day, while Fred Young was steering the ship in through the fog, that the said Captain told these men that if the Union wins, the men wouldn't have any jurisdiction over their jobs. "People from the coast will come in and take their jobs away; colored fellows will come in and bunk with you; and they will take your jobs away, too. Colored fellows will come in and bunk with you."

Trial Examiner Leff: All right. Please proceed.

Mr. Belkin: That is all.

Trial Examiner Leff: Is that all of this witness?

The Witness: Mr. Examiner, I would only like to add one thing, if I may, in connection with this, in just a few words. I feel it is extremely relevant.

Trial Examiner Leff: Go ahead.

The Witness: That is, that Fred Young had told me this about one hour after it happened, when we were in Duluth. He told me that he was so agitated, and so completely upset that he felt like walking off the bridge; but he couldn't do it.

Trial Examiner Leff: Where is Fred Young now?

The Witness: I don't know where Fred Young is now. I know his address. He felt extremely indignant about it.

Mr. Rosenfeld: Let me state this for the record, Mr. Examiner. The Union has made every effort to find every seaman involved in these ships in the year 1944, during the period covered by the complaint. Except for the 10 or 11 witnesses we have managed to produce now, these were the only ones we could produce after a search over a period of a year. We have been unable to find any additional ones. These men are shipping. They are shipping on both oceans. It is not an easy matter to bring these men to a hearing just when we want them brought. The Company has a fairly easy time bringing its masters and mates. But you can't bring unlicensed men who are sailing under the orders of the War Department. It is almost miraculous that we have brought as many as we have.

Mr. Belkin: I would like to say, further, that we have affidavits sworn to before agents of the Board of several others, whom we cannot secure for this hearing.

Trial Examiner Leff: Do you have an affidavit for these people who the witness has referred to?

Mr. Belkin: No. We have never been able to reach them.

CROSS EXAMINATION.

Q. (By Mr. Ray): Mr. Herrick, did you go on the Mc Gonagle for the express purpose of organizing? A. No.

Q. How long after you got aboard were you designated as organizer? A. I was voluntary organizer from the time I stepped aboard the ship.

Q. Well, it is accurate to say you went aboard for the purpose of organizing, if you were an organizer? A. I went aboard to organize.

Q. You continued your organizing all the time you were on there? A. That's right.

Q. Now, will you give us just a brief outline of your sailing experience prior to 1944? A. I sailed on ships since 1928, on all oceans, and practically everywhere.

Q. Immediately prior to going on the McGonagle, had you been on the coast? A. I have been on the coast.

Q. Then it is a fact you came up from the coast to organize—participate in the organization of the Pittsburgh Steamship fleet? A. Right.

Q. Now, referring to Board's Exhibit 4, you stated on direct examination, Mr. Herrick, that this Exhibit was

on your bunk, as I recall; is that true, or in your room someplace. A. Is this Exhibit 4 (indicating)?

Q. That is the speech of Congressman Bradley. A. Right.

Q. And it was in an envelope? A. Right.

Q. And did you examine the envelope very carefully? A. I did; yes.

Q. Can you tell me, or do you recall at this time what postmark it had on; what city it was from? A. The city?

Q. Yes. A. I am sorry, I don't recall that; no.

Q. Do you recall whether it was a white envelope or a brown envelope? A. I don't remember. I'd say it was white. But I don't really remember. It might have been brown.

Q. Did it have any printing on it at all, any return address, anything to indicate who it was from? A. I believe it had the Congressman's return address. I am not sure.

Q. Congressman Bradley? A. Congressman Bradley. I am not certain whether it did or not.

Q. You are reasonably certain; aren't you? A. Well, I wouldn't swear that it did or it didn't.

Q. I mean, the thought wouldn't occur to you now unless there was some possibility; isn't that true? A. No; the thought wouldn't occur to me one way or the other.

Q. Well, you wouldn't say it didn't have Congressman Bradley's return address? A. No; I wouldn't say it didn't.

Q. Now, this discussion that the Captain had with the men after this meeting, how many men were there, Mr. Herrick? A. There were five or six men there, I believe.

Q. And how do you fix the time of the year, and even the time of the night with such particularity after this long period of time? A. I fix the time of the night, because it was on a particular night that we had a meeting. We had a Union meeting. After the Union meeting was broke up, I believe, around 8:30, the Captain stayed in the deck watch's room until after midnight that particular night talking about the Union with the men.

Q. And how do you fix it as the middle part of April? Do you tie it up with any voyage? A. Yes; I tie it up with the first meeting that we held in the dunnage room up forward.

Q. Then it is a fact that you had a place to meet, and that was the dunnage room? A. We had the dunnage room and various places.

Q. But the Captain had specified the dunnage room was the place for you to meet; is that right? A. The Captain had suggested the dunnage room. He had also suggested the various rooms forward and aft. He made no specific designation at all.

Q. But he said the dunnage room was available? A. The dunnage room was available, and so was the hatch.

Q. Now, where was the vessel when the Captain stayed back in the deck watch's room for four hours? A. The vessel was on the lake. I don't recall—I don't recall what lake it was on. But it was on the lake, and I think we were going north.

Q. What was the condition of the weather? A. The condition of the weather as far as I can recall was—I remember it was cold. I believe there was ice around.

Q. It was cold, and there was ice, and he was back in the deck watch's room for four hours? A. In the deck watch's room up forward.

Q. Can you give me the names of any men who were in the deck watch's room at that time? A. Yes; Clarence Sanders, S-a-n-d-e-r-s, Fred Young, and there were several others whose names I can't recall. I would know them by sight immediately. If I were presented with the list of names I could pick them out. But I don't remember the names.

Q. What was your watch on the vessel? A. My watch was 2 to 6.

Q. And you were an oiler? A. I was an oiler; right.

Q. Did you stay in the deck watch's room for the full four hours? A. No.

Q. How do you know he was in there? A. I know he was in there because both Clarence Sanders and Fred Young told me he was in there.

Q. How much of the time were you there? A. I wasn't in there at all.

Q. Well, then, all of this information that you have given with respect to what he said in the deck watch's room on your direct examination is based upon testimony given by Fred Young and Sanders; is that right? A. Right.

Mr. Ray: I move it be stricken.

Mr. Belkin: I object on the same ground that I objected before.

Trial Examiner Leff: I won't strike it. When I consider the record I will give it as much weight as I think it warrants.

Mr. Ray: It is purely hearsay.

Trial Examiner Leff: Well, the record will show when I read it.

Mr. Ray: That is all.

Trial Examiner Leff: Any further questions?

Mr. Belkin: If the Examiner please, may I continue?

Trial Examiner Leff: Yes.

RE-DIRECT EXAMINATION.

Q. (By Mr. Belkin): Mr. Herrick, will you please tell us just what the Captain told you was to be done or not to be done about the meeting of men on the ship? Do you understand my question? A. Are you referring to the time I saw the Captain about meetings? Do you mean that?

Q. Begin with that and tell us just what the Captain's policy and statements were regarding that issue.

Mr. Ray: Object to that. It is not proper re-direct.

Trial Examiner Leff: Go ahead. I will allow it.

A. Well, the first conversation I had with the Captain about meetings happened about the first week in April, I believe, on an upbound trip in Lake Michigan, around 7:30 in the morning. I went up to the Captain's room and knocked on the door, and was admitted. I told the Captain, or I asked the Captain, rather, what the chances were of members of the crew holding meetings aboard the ship. He wanted to know what kind of meetings. I told him meetings for safety of the ship; meetings to get together and discuss various issues. The Captain said that—I think at that time, I also added: "How is chances of holding meetings in the mess room of the ship?" The Captain answered me—he said, "Why don't you hold your meetings in the fireman's room, or somewhere else?" I asked him again about the mess room. He never specifically answered me on that, but he suggested the fireman's room or the dunnage room, or the wheelsman's room, or any-

where we could get together, or out on deck on the fantail. He said also in conversation that the mess room was the place to eat. He didn't think that meetings should be held there.

Q. (By Mr. Belkin): Then I take it you followed the Captain's suggestion, and thereafter held formal meetings which you called, in the dunnage room? A. In the dunnage room, and in a couple of other rooms. In the wheelsman's room, for example, in the fireman's room, and in the dunnage room.

Q. Did you notify the Captain you were holding those meetings? A. At specific times—no; I didn't, but the Captain was aware of it.

Q. Did you hold any other meetings that you may term as informal in the sense that they were spontaneous rather than called previously by you, and arranged for previously by you? A. Yes.

Q. Will you tell us where those meetings occurred? A. One meeting in particular occurred in the mess room, and other meetings also occurred in the fireman's room, and various places, wherever we happened to be, depending upon the weather.

Q. Did the Captain in any way interfere with your meeting in the mess room, to your formal gathering? A. He did.

Q. What if anything did he do? A. About two or three minutes after we began our meeting, we began talking, the Captain came back. He stuck his head in the galley door and directed his conversation to me. He said, "Get out. Get out of the mess room. This is the place where we eat." He said, "There won't be any more meetings held here." He spoke specifically at me, and said that if I didn't get out he would throw me out.

Mr. Belkin: That is all.

Re-Cross Examination.

Q. (By Mr. Ray): Mr. Herrick, the conversation between you and the Captain during this meeting at the mess room occurred after the conversation that you told about in which he said you could hold it in the dunnage room and various other rooms on the ship; that is true, isn't it? A. That's right.

Q. This holding of the meeting was a violation of the order; wasn't it? He told you that that wasn't the place to have it, because that is where the men eat? A. The Captain at no time specifically told me not to hold meetings in the mess room. He suggested other places, but he didn't specifically put an order against meetings in the mess room.

Q. Well, Mr. Herrick, isn't it a fact when the master of a vessel says he thinks the meetings should be held somewhere else, and that the mess room is to be used for eating, that it could properly be construed as an order of the master?

Trial Examiner Leff: Well, would you construe that as an order?

The Witness: No, sir; I wouldn't.

Mr. Ray: That is all.

Trial Examiner Leff: Any further questions?

Mr. Belkin: That is all.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: We will recess until 9:30 tomorrow morning.

(Whereupon, at 5:30 o'clock p.m., Friday, July 27, 1945, a recess was taken until tomorrow morning, at 9:30 o'clock, a.m.)

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702 Public Square Building,
Cleveland, Ohio,
Saturday, July 28, 1945.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 A. M.

(Appearances omitted.)

Trial Examiner Leff: The hearing is in order. Call your next witness, please.

Mr. Belkin: At this time I would like to call Mr. Anderson.

GEORGE W. ANDERSON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Trial Examiner Leff: What is your full name?

The Witness: George W. Anderson.

Trial Examiner Leff: Where do you live?

The Witness: 542 Abbott Street, Detroit, Michigan.

Q. (By Mr. Belkin): Were you at any time employed by the Pittsburgh Steamship Company? A. Yes, sir.

Q. And what was the term of your service with that Company, Mr. Anderson? A. From April 10 to June 21, 1944.

Q. Do you recall the name of the ship on which you sailed? A. Horace Johnson.

Q. What was your job aboard that ship? A. Wheelsman.

Q. Do you recall the names of the licensed personnel? A. The captain's name was Clarence Wallace; the mate's name was Earl Bauman; the second mate's name was Brown, I think it was Francis, I ain't sure; the third mate's name was McLaughlin.

Q. Do you remember the name of the chief engineer? A. His name, I believe, was Leng (spelling) L-e-n-g I believe is the way he spelled it.

Q. Do you remember the name of the first assistant? A. His name was Anderson, the same as mine.

Q. You are a relative, I take it? A. No, thank God.

Q. And any of the other assistants? A. I don't know the other two engineers.

Q. I now hand you what has been marked as Board's Exhibit No. 2 and ask you if you have ever seen that before? A. I did, sir.

Mr. Hinslea: Is that Board's Exhibit 1?

Trial Examiner Leff: Board's Exhibit 2.

Mr. Hinslea: Thank you.

Q. (By Mr. Belkin): When did you see it? A. I saw it on the Horace Johnson along about—

Trial Examiner Leff: You are mumbling, I can't hear you. Please raise your voice.

Mr. Belkin: Just lift your voice up a little, Mr. Anderson.

The Witness: I saw it on the Horace Johnson along about the 10th of May, I should judge. It was on the

bulletin board in the hallway on the ship, and then I got one myself.

Trial Examiner Leff: Did you get one of these by mail?

The Witness: By mail, yes, sir.

Q. (By Mr. Belkin): I hand you what has been marked Board's Exhibit 3, and ask you if you ever have seen that before? A. I did.

Q. When did you see it? A. Right after the 1st of May—the 1st of June, right before election.

Trial Examiner Leff: Did you get that by mail, too?

The Witness: I did that.

Q. (By Mr. Belkin): Now, I hand you what has been marked as Board's Exhibit No. 4 and ask you if you have ever seen that before? A. I did.

Q. When did you see it? A. It was handed to me by the captain in the pilot house the 25th of May.

Q. If you talk to me across the room, they will get your answers, Mr. Anderson. The room is a little—the acoustics aren't too good, so you keep your voice up, if you can.

Did the captain say anything to you at the time he handed you that pamphlet? A. No, he didn't say anything to me about it.

Q. During the term of your service aboard the Horace Johnson, did you at any time discuss any matters involving the Union with any of the licensed personnel? A. I did.

Q. With what members of the licensed personnel? A. The captain.

Q. Do you recall when you first had a conversation touching these questions with Captain Wallace? A. About the 15th of April.

Q. And where did the conversation take place? A. In the pilot house.

Q. Was there anyone else present at the time? A. Not that I know of. I won't be sure; the mate might have been there.

Mr. Hinslea: Well, if he isn't sure, I move it be stricken.

Trial Examiner Leff: Well, it is an answer. I mean isn't it possible that a man might not be sure as to whether someone else was there or not?

Mr. Hinslea: Then it is not competent.

Trial Examiner Leff: What is that?

Mr. Hinslea: It is not competent.

Trial Examiner Leff: Why not? We have it as a fact, he is stating what his recollection is.

Mr. Belkin: It in no way prejudices your position, Mr. Hinslea.

May I go on?

Trial Examiner Leff: Yes. The motion to strike is denied.

Q. (By Mr. Belkin): Mr. Anderson, directing your attention again to this conversation which you are relating to us, what if anything did the captain say to you, and what if anything did you say to him? A. The captain asked me if I belonged to the National Maritime Union, and I told him I was a member.

Q. Did he say anything further, or did you say anything further? A. Yes, he says, "I don't like the National Maritime Union."

I asked him why, and he said, "If I should go from this ship to another ship I couldn't take my crew with me. And that is the reason I say I don't like the National Maritime Union."

Q. Was there anything further said by either one of you? A. I went on and explained how our Union was running with the rotary shipping.

Q. Did you thereafter have another conversation with the captain? A. Sometime later, about two weeks I should judge.

Q. And where did this conversation take place? A. In the pilot house.

Trial Examiner Leff: Did we get the date of the first conversation?

Mr. Belkin: Yes, he said April 15, I believe, didn't you?

The Witness: Yes, about the 15th of April.

Trial Examiner Leff: All right.

Q. (By Mr. Belkin): Now, coming back to the second conversation, I think you just testified it was in the wheel house? A. Yes, sir.

Q. Did you tell us if anyone else was present, to the best of your recollection? A. I couldn't say—

Q. What if anything did the captain say to you at that time, and what if anything did you say to him? A. Well, he asked me if I would sleep in a room with a nigger. And I told him that I couldn't see no difference between these niggers, a Filipino or a Chinaman. A negro is dark, and so were they. And I considered that one was as good as another.

That was the end of our conversation.

Q. Did you see aboard the ship the pamphlet "NMU Fights Jim Crow"? A. I did.

Q. Where did you see that pamphlet? A. I got it by mail to me.

Q. Addressed to you in person or to your rank, or which? A. Rank.

Q. Now, Mr. Anderson, did you at any time thereafter have any other conversations with the captain on matters touching the Union? A. Yes, I did.

Q. When did this conversation take place? A. This took place along the middle of May.

Q. Where did it take place? A. In the pilot house.

Q. And who if anyone else was present? A. As far as I know, he was—him and I were there alone.

Q. What if any thing did the captain say to you? A. He asked me how many members—if there was any members aboard the ship on the forward part, and I told him I didn't know whether there were or not. And he stated that they were all union men aft, and he was wondering if there was any forward or not.

Q. Did the captain thereafter at any time ask you concerning the Union affiliation of any men aboard the ship? A. I didn't get that?

Q. Did the captain thereafter at another time ask you whether any other member—any other men aboard the ship were members of the Union?

Mr. Hinslea: That is rather leading, isn't it?

Trial Examiner Leff: Well, I suppose it is. Can you reframe it?

Mr. Belkin: Yes, I can.

Q. (By Mr. Belkin): Did you at any other time have a conversation with the captain on matters involving union after this one? A. I did.

Q. When did that occur? A. Oh, that occurred along the latter part of May.

Q. Where did this conversation take place? A. In the pilot house.

Q. And was there anyone else present, to the best of your recollection? A. I couldn't say.

Q. Do you recall what the captain said to you if anything? A. Yes, he asked me if I was an organizer or just a good Union man.

Q. And what did you say? A. I told him we have a slogan in our union that every member was an organizer, and you know I belong to the Union.

Q. Did you have any other conversation after this one?

Trial Examiner Leff: Let me interrupt, there. Does each ship have an official organizer, I mean designated by the Union?

The Witness: Well—

Trial Examiner Leff: Do you know? If you do know, tell me.

The Witness: Some ships do.

Trial Examiner Leff: What is he known as?

The Witness: As an organizer.

Trial Examiner Leff: Did you ever hear the expression "ship's organizer"?

The Witness: Yes.

Trial Examiner Leff: And how many ship's organizers are there on a vessel?

The Witness: Well, there might be one or there might be two. And as a general rule one is the organizer, the other fellows work under him.

Trial Examiner Leff: I see, and the one who is the organizer, is he the one known as the "ship's organizer"?

A. The Witness: That is right.

Trial Examiner Leff: Thank you.

Q. (By Mr. Belkin): Did you always organize openly? A. No, not always, no.

Mr. Hinslea: You mean he personally?

Mr. Belkin: I am getting at the practice. I am going to refer to him specifically right now.

Q. (By Mr. Belkin): Did you yourself organize openly? A. No, I didn't.

Q. Just what did your activities aboard that ship as an organizer consist of, do you recall? A I took the men in my room and had conversations with the various members of the unlicensed personnel, and talked over the principles of the Union with them from one time to another.

Q. Now, to go back to your conversations with the captain, directing your attention to the month of June, prior to the election, did you at any time in that month before the election have any conversation with the captain on matters touching the Union? A. Yes, I did.

Q. And when did this conversation take place? A. 5th day of June, in the afternoon.

Q. How do you fix it to be the 5th day of June, Mr. Anderson? A. I was up in the Union hall in Two Harbors on June 4th, which was Sunday, about 11 o'clock in the morning. When I went in the hall the wheelsman and watchman off of the six to ten watch, was in the Union hall. They had left right after I went there. And they came back aboard the ship. About a little after that I came back aboard the ship, and the ship left Two Harbors I should say about four o'clock in the afternoon.

Q. Just a minute, Mr. Anderson, you are telling us this in order to explain to us why you remember that June 5 was the day you had the conversation with the captain? A. Yes.

Q. Well, suppose you tell us about the conversation, then you can further explain the events leading up to it, if you wish. Where did you talk to the captain that day? A. In the pilot house.

Q. Was anyone else present at the time? A. I don't believe they were.

Q. What did the captain say to you? A. He asked me if Bean and Carter was members of the Union. And I told him I didn't know whether they were or not. That he had better ask them.

Q. What did he say in reply to that, if anything? A. He said, "They were up to the Union hall yesterday, wasn't they?"

And I replied, "Well, what of it?"

And he said, "They must belong to the Union."

And I said, "I don't know, you will have to ask Bean and Carter that, I don't know their business at all."

Q. Was there anything else said by either one of you? A. Yes, he says, "That is funny that you don't know whether they belong to the Union or not."

Q. Did you reply to that? A. Well, I said, "I ain't here to look into people's business or read their minds. I don't know whether they belong or whether they don't."

Q. Were these two men the men that had been in the Union hall the previous day? A. They were.

Q. To your knowledge, had the captain spoken to these men concerning their Union affiliation? A. I was so informed by the wheelsman Carter, and Bean the watchman.

Mr. Hinslea: I object to that. It is purely hearsay.

Trial Examiner Leff: Well, let it stand. It is hearsay. We will give it the weight that hearsay deserves.

Q. (By Mr. Belkin): Tell us just what if anything Carter and Bean told you about their conversation with the captain? A. Carter came in the room—

Mr. Hinslea: May I have the same objection?

Trial Examiner Leff: Yes. Let me hear the question.

(Question read.)

Trial Examiner Leff: Well, I think I will have to rule on that the same way I did yesterday.

Mr. Belkin: Then may I make an offer of proof on the same basis as yesterday?

Trial Examiner Leff: Yes.

In other words, so that the record may be clear, it is obvious that this calls for a hearsay declaration. I am ruling it out.

Mr. Belkin: On the basis of the argument I made yesterday, and also because this in a sense is an explanation of the conversation of the captain and the remarks of the captain to the witness, in which he asked him concerning the Union affiliation of these two members, I think that it is proper, and should be in the record. And, therefore, on that basis I make this offer of proof:

That if the witness had been permitted to testify, he would have testified to this effect:

That Bean and Carter told him that morning that the captain had come up to them and said, "What business—"

Mr. Hinslea: Which morning?

Mr. Belkin: The morning of June 5.

(Continuing) He had come up to them and had said: "What business do you fellows have at the Union hall, and do you belong to the Union?"

And that these men had replied it was none of his business. And had further said that they knew that Mate Brown had been spying at them at the Union hall the previous day, and that they had seen him, the mate, looking through the window.

Mr. Hinslea: Mr. Examiner, could I have that read back so that I can write it down?

Trial Examiner Leff: Yes.

Mr. Hinslea: Will you read it, please?

(Record read.)

Trial Examiner Leff: The offer of proof is rejected.

Q. (By Mr. Belkin): Now, Mr. Anderson, did you at any time speak to either the chief engineer or any of the assistants or mates concerning the Uni[illegible]? A. Yes, I have, I talked to the first assistant engineer.

Q. That was Anderson? A. Anderson.

Q. And where did you speak with him? A. In the galley.

Q. Do you recall when this occurred? A. Oh, this was along the latter part of April, the 1st of May, somewhere around in there.

Q. Do you recall if anyone else was present at the time? A. Yes, Sims was present at the time.

Q. Sims? A. Yes.

Q. Was he a member of the crew and unlicensed? A. Yes.

Trial Examiner Leff: So that the record will be clear, is it conceded that members of the licensed personnel are supervisors?

Mr. Hinslea: Well, that question hasn't been decided here on the Lakes, it is going to be decided.

Trial Examiner Leff: What did the Board decide in the "R" Cases?

Mr. Belkin: That they were.

Trial Examiner Leff: And what was the position of the Respondent in the "R" proceeding, that they were or were not?

Mr. Hinslea: I don't know that the Board in any election decided that the engineers were supervisors.

Mr. Belkin: If I might aid the Examiner, an election was held in June, 1944, as a result of a consent agreement, and in the agreement the Company agreed that all licensed personnel were supervisors and should be excluded.

Mr. Hinslea: No, that isn't a fair statement.

Trial Examiner Leff: Is there any reason why we shouldn't have the consent election agreement in the record?

Mr. Belkin: No, we can put that in.

Trial Examiner Leff: I understood it was a formal proceeding that went through Washington, and therefore I said I was going to take judicial notice of it. However, if it was a consent election, I wouldn't be able to take judicial notice of it, I won't have the papers.

I think you ought to get into the record all the formal proceedings in the "R" proceeding, that is the petition, so that I know the date of the petition, the consent election agreement, and the tally of the ballots, and if there is anything else in there you should put that in too.

Mr. Belkin: I would be glad to do that, Mr. Leff, but earlier in the hearing I understood that you directed a similar question to Mr. Hinslea, and he said, it seems to me that he said that he agreed that licensed personnel were supervisors.

Trial Examiner Leff: That is my impression. I am not sure.

Mr. Hinslea: There was some conversation. I might have said that. But this is the position that I have got to take. At the present time before the Board there is a petition for certification of engineers in the Union, and the question is now coming before the Board as to whether or not these men are supervisors. I am now talking about these assistants. I don't think there is much question about the chief engineer or captain. But these assistants I think there is going to be quite a controversy on it.

Trial Examiner Leff: What is the position of the Company, does the Company contend they are or are not supervisors?

Mr. Hinslea: Well, I don't think that I am going to take the position until the other case is decided, and if the Government feels that they want to show they are supervisors, they should do so.

Trial Examiner Leff: You say there is a pending proceeding?

Mr. Hinslea: Yes.

Trial Examiner Leff: What position are you taking in that proceeding?

Mr. Hinslea: We haven't gotten to that point yet. We have just had the preliminary conference, and the hearing has not been set.

Mr. Rosenfeld: Mr. Examiner, the proceeding to which Mr. Hinslea undoubtedly refers, namely where the licensed officers aboard these ships may take advantage of the Act in order to select their collective bargaining agent, has nothing to do with the issue concerning which you asked the question.

Trial Examiner Leff: Yes, I understand this, under the present Board rule, I suppose it is always the rule in the Maritime industry, even supervisors might form a part of an appropriate collective bargaining unit.

Mr. Rosenfeld: Yes. And I cite the Examiner's attention to a number of previous cases decided with relation to the Great Lakes, I can't give you the official citations at this moment, but I will be happy to furnish them at some appropriate time. In those cases, the companies, Cleveland-Cliffs Iron Company, Midland Steamship Company, among others, mind you, both of them were represented by Mr. Hinslea—

Trial Examiner Leff: That doesn't make it binding on this Respondent.

Mr. Rosenfeld: But that is a matter of formal decision by the Board, mind you, and they took the position that all licensed officers are supervisory, and therefore could not be included in a unit, up to the point of including the chief cook who wasn't a licensed man. And the Board ruled adversely to Mr. Hinslea's contention. I think it is clear upon Mr. Hinslea's contention, I think Mr. Hinslea is dead right, when he refuses to give a formal position on this record, he knows very well that every licensed man is a supervisor in the terms of the Board's definition of supervisors.

Trial Examiner Leff: I would like to have this record complete. If we can't get a concession on that point, I should like to have evidence on the record on the question as to whether the assistant engineers are or are not supervisory employees.

Mr. Belkin: If Mr. Hinslea wishes to put me to the burden of proof on that, I would be glad to comply, but as I understood before, I understood he agreed.

Trial Examiner Leff: That was my impression.

Mr. Hinslea: I think the record might show that. But I have now got to take the position that if the Government wishes to show that these are supervisors, then they have to do it by proof.

Trial Examiner Leff: What members of the licensed personnel do you concede are supervisors, so we will limit the proof on that?

Mr. Hinslea: The captain and the chief engineer.

Trial Examiner Leff: The captain and the chief engineer. How about the chief mate?

Mr. Hinslea: No, none of the assistants. I will concede that the captain and chief engineer are definitely supervisors.

Mr. Belkin: Well, I am afraid, Mr. Leff, we won't finish the Board's case today.

Trial Examiner Leff: In view of the fact that you have been mislead, and since I understand that the Respondent contends, or, rather, that the Respondent has indicated to us earlier that he intends to apply for an adjournment, and that you were prepared to acquiesce to some adjournment, I won't necessarily insist that you close your case, and you will be given additional time to furnish people for that point.

Mr. Hinslea: I will meet Mr. Belkin's defense.

Mr. Rosenfeld: Mr. Examiner, speaking for the Union, now, I think that when the time comes on any adjourned hearing, the Board with the assistance of the Union in this case will be able to establish that Mr. Hinslea's position is entirely without foundation, and taken purely for the purpose of injecting an issue which doesn't exist, and that we are not concerned with, except I note that the lack of good faith is so glaring it comes with the impact of a blow, which isn't unusual, as the Board can take judicial notice of—

Mr. Hinslea: I object to this man accusing me of bad faith.

Mr. Rosenfeld: The Board has found in the past that you have been guilty of bad faith in these matters.

Mr. Hinslea: We move that that be stricken from the record.

Trial Examiner Leff: Well, everything remains on the record.

Mr. Belkin: I suggest we continue with the examination of this witness.

Trial Examiner Leff: Let me ask this question, maybe we can get it through a short-cut method. Do you expect in this proceeding to offer proof to show that none of the licensed personnel other than the captain and chief engineer are supervisory employees, is that your definite position in this proceeding?

Mr. Hinslea: No, I don't expect to show any proof on that, the burden is on them, they have charged that these men who are supervisors have made derogatory remarks and coercive remarks. Now the burden is on them to get within their allegations. I don't have to make any proof.

Trial Examiner Leff: No. Let me ask, it is your position on the record here that none of the licensed personnel except the captain and the chief engineer are supervisory employees? I would like to get your exact position on that.

Mr. Hinslea: I am forced to take the position—

Trial Examiner Leff: It isn't a question of what you are forced to do, you aren't being forced to do anything. My only question is this:

Does the Respondent contend that licensed personnel employed on board its vessels other than the captain and the chief engineer are non-supervisory employees?

Mr. Belkin: Let us go off the record for a moment, Mr. Examiner.

Trial Examiner Leff: I would like to get an answer to that.

Mr. Belkin: I would like to talk to Mr. Hinslea first.

Trial Examiner Leff: All right, let us go off the record.

(Discussion had off the record.)

Trial Examiner Leff: On the record.

Will you please read my question to Mr. Hinslea.

(Record read.)

Mr. Hinslea: Well, in light of other cases that are pending before the Board, Mr. Examiner, that involve that question and on which many other companies and many

other lawyers are involved, I will have to refuse to answer the question.

Mr. Belkin: Let us go on with the examination of the witness if you please, Mr. Leff.

Trial Examiner Leff: Well, I don't see why you should refuse to state your contention in this proceeding.

Mr. Belkin: Well, I will say in Mr. Hinslea's defense that in our off-the-record discussion he gave me what seemed to be valid reasons in his opinion for not taking this position, even though he may have taken it previously, and I feel, therefore, that the Board should go ahead and show that these men are supervisors.

Trial Examiner Leff: Are you prepared to do that?

Mr. Belkin: Yes.

Mr. Rosenfeld: Mr. Examiner, I take it, then, as far as the state of the record is concerned, that the issue as presented on the record is that the Respondent holds that they are not supervisory employees?

Trial Examiner Leff: Well, apparently the respondent takes no position whatever.

Mr. Hinslea: That is the position I would like to take, I take no position.

Trial Examiner Leff: Well, will you adduce evidence before the close of the hearing?

Mr. Belkin: I shall attempt to do so.

Trial Examiner Leff: I think, for example, one reason it is hard to understand the present position is this, somewhere else in the hearing the question came up as to whether a 1st mate hires and fires. And I think you took the position that the 1st mate does hire and fire. That would certainly make a 1st mate a supervisor.

Mr. Hinslea: I think that before the case is over, Mr. Examiner, that you will have no trouble deciding as to what is the position of these men, you will have no difficulty.

Trial Examiner Leff: Very well.

Mr. Hinslea: There are going to be plenty of licensed officers offered by the Respondent, who either you or the Government attorney can examine as to their supervisory status. And the record will be quite complete, I think.

Trial Examiner Leff: Well, I would like to save time. Perhaps you can answer this question: Does the Respondent consider these employees supervisory employees?

Mr. Hinslea: Well, I tell you frankly, Mr. Examiner, I think it is unfair because of other proceedings that the attorney for the Respondent is in to press the question.

Trial Examiner Leff: Well, the reason I am pressing the question, it had always been my understanding that steamship companies in the Great Lakes area had taken the position that all members of the licensed personnel were supervisory employees.

Mr. Hinslea: Do you want my personal opinion on the record? I will be glad to give you my personal opinion.

Trial Examiner Leff: Your personal opinion won't mean anything.

Mr. Hinslea: It might stop the asking of the questions. I would be glad to give you my personal opinion on it for what it is worth.

Trial Examiner Leff: How do you want me to use your personal opinion?

Mr. Hinslea: You can use it any way you want.

Trial Examiner Leff: Are you giving the opinion as the attorney for the Respondent.

Mr. Hinslea: No.

Trial Examiner Leff: I don't know what you want to—

Mr. Hinslea: My personal opinion.

Trial Examiner Leff: I will be glad to have it, but I want to know to what extent I can use it. I don't want to mislead you.

Mr. Hinslea: That is up to the Examiner as to how to use it. My personal opinion is, yes, they are supervisory.

Mr. Ray: Mr. Leff, these men will have to be produced, and two or three questions will produce the proof you need.

Trial Examiner Leff: Not necessarily. Sometimes it is rather difficult to establish whether certain people are supervisors. If it was a matter of two or three questions I wouldn't press the point.

However, proceed.

Q. (By Mr. Belkin): It is some time back since I asked you a question, Mr. Anderson. I believe that the last question was whether you had conversed with either the chief engineer or the first assistant, and you had answered that you had talked to the first assistant who has the same last name as yours, is that correct? A. Yes.

Q. And I don't recall at this moment whether you told us where that conversation took place, did you? A. Yes, I did, in the galley.

Q. And did you give us the time of that conversation, roughly? A. That conversation I should judge would be about the 10th of May, around there, in the evening, about 10 o'clock in the evening.

Q. Do you recall who if anyone else was present at that time? A. Sims was there, for one, and some firemen and coal passers was around there. There was five or six in the galley. I don't know them all.

Q. And do you recall what if anything the first assistant engineer Anderson said? A. Yes.

Q. Will you tell us what he said? A. He said he wouldn't pay over 50 cents a month for dues in any Union, and anyone who would pay $2.50 a month into the Union was a God damned fool.

Q. Did you make any reply to that statement? A. I don't know whether I did or not. I wouldn't say.

Q. Was anything further said by anyone present? A. Well, Brother Sims there, he was talking to him, too.

Q. By Sims, you refer to the same shipmate of yours that you have previously? A. Yes.

Q. Was there any other time when First Assistant Engineer Anderson spoke to you concerning the Union? A. Yes.

Q. When and where did he speak to you? A. In the galley.

Q. Do you recall when? A. Somewhere along about the 1st of June.

Q. And do you recall if anyone else was present? A. There was four or five present.

Q. Do you remember their names? A. I don't remember who they were.

Q. Well, what if anything did Anderson say to you at that time? A. Well, he repeated as I said before, "I wouldn't pay over 50 cents a month dues in any Union. And anybody who would pay $2.50 a month dues is a God damned fool. If you win the election in this company you will have to dig down to the tune of $2.50 a month to feed Joe Curran. He must be getting pretty hungry now, and to keep a lot of gas hounds and drunks hanging around the corners."

Q. Directing your attention to the period of time after the election which occurred on June 6 in your ship, did it not? A. Well, around the 10th.

Q. On June 10 in your ship? A. Yes.

Q. Did you at any time thereafter have any conversations with any member of the licensed personnel regarding the Union? A. After June 10th?

Q. Yes. Or after the election? A. I don't remember.

Mr. Belkin: You may cross examine.

CROSS EXAMINATION.

Q. (By Mr. Hinslea): Mr. Anderson, you have been sailing a good many years, have you not? A. That's right.

Q. How old are you? A. 65.

Q. And it is not unusual for an old-time wheelsman and a captain to talk in the pilot house at night, on the night watch, whenever he is up there? A. That's right.

Q. You have done that with many captains, haven't you? A. Yes, I did.

Q. And as an old timer, you will admit that there are a lot of arguments and talk aboard a ship among the men and the officers, whether or not there is Union election or whether or not it is just normal times, isn't that right? A. Yes.

Q. And both sailors and officers express their own and varied opinions about all varied subjects, don't they, while they are working together in the pilot house? A. Oh, yes, yes.

Q. Now, this Exhibit 4 which is a printed speech of Congressman Bradley, wasn't that in an envelope when it was handed to you? A. I am quite sure it was.

Q. It was? A. Yes.

Q. And did it look to you as if it came through the mails? A. Yes, sir.

Q. And isn't it a fact that, Mr. Anderson, that on the outside it had a return address of the Hon. Fred Bradley, House of Representatives, some district or something, Washington, D. C.? A. I couldn't say.

Q. You wouldn't say that it didn't? A. No, and I wouldn't say that it did, either.

Q. Well, did it come from the Pittsburgh Steamship Company? A. I don't know.

Q. Did it have the Pittsburgh Steamship Company's return postmark printed on it? A. As far as I know, there wasn't any return postmark.

Q. You say it was just a plain envelope?

Trial Examiner Leff: Let me ask a question at this point. You said it was delivered to you by the captain?

The Witness: Yes.

Trial Examiner Leff: Did the captain deliver mail at that time?

The Witness: All the mail was taken up in the pilot house and sorted out for the various groups and various members of the crew, and the mate or someone distributed it around the ship.

Trial Examiner Leff: Does the captain distribute it at times?

The Witness: He had some copies up in the pilot house.

Trial Examiner Leff: Does the captain ever distribute mail?

The Witness: No.

Trial Examiner Leff: But did the captain distribute this to you?

The Witness: He did.

Trial Examiner Leff: Do you recall any case where the captain ever distributed mail to the members of the crew?

The Witness: No.

Q. (By Mr. Hinslea): Just one point, Mr. Anderson, at the time you received this, you were at the wheel up in the pilot house? A. That is right.

Q. And the mail is brought up there in the pilot house where the captain is and he sorts it out? A. Well, the mate and him sort it together.

Q. And all the captain did on this case, you being a couple of feet away from him, he merely handed it to you, did he? A. That is right

Trial Examiner Leff: Let us be off the record.

(Discussion had off the record.)

Trial Examiner Leff: On the record.

Q. (By Mr. Hinslea): You have testified that the captain never distributed the mail, is that right? A. That's right.

Q. But on this particular occasion because you happened to be on watch in the wheel house, he was there, he merely handed you the letter? A. Yes.

Mr. Rosenfeld: Just a minute. I object to that as calling for a conclusion. And I don't think the witness should be required to answer, because it obviously deals with the workings of the captain's mind.

Trial Examiner Leff: I sustain the objection.

Q. (By Mr. Hinslea): Mr. Anderson, you were at the wheel in the pilot house? A. That is right.

Q. This mail was distributed on the chart table that is about two feet back from the wheel, back from the wheel two or three feet? A. Four or five feet.

Q. Four or five feet? A. But there was no mail there at the time, it had been distributed before that. This was some time after the mail had come aboard.

Q. And while you were in the pilot house the captain handed you this letter? A. That is right.

Q. All right.

Now this conversation that you had with the captain on the 25th of May—

Trial Examiner Leff: Let me get this straightened out, where were you? Were you in port at the time he gave you the letter?

The Witness: No, we was on the lake.

Trial Examiner Leff: You were on the lake?

Now, how is mail normally distributed, while at port?

The Witness: No, it comes aboard at Detroit, we have a mail boat there.

Trial Examiner Leff: Yes.

The Witness: They come alongside the ship, they take and lower a bucket over the side, and the mail man puts the mail in the bucket that is put down and sends it aboard, and they haul it aboard the ship.

Trial Examiner Leff: But when the distribution is made, is the ship anchored at port?

The Witness: No, no.

Trial Examiner Leff: When is the distribution made?

The Witness: While the ship is going.

Trial Examiner Leff: And usually how long after the ship leaves is the distribution made?

The Witness: Oh, generally within 30 minutes.

Trial Examiner Leff: Within 30 minutes? How long had it been away from port at the time you received this Exhibit 4, this speech of Congressman Bradley, do you recall?

The Witness: Oh, it must have been some time—must have been eight or ten hours.

Trial Examiner Leff: I see.

The Witness: Because I had seen them down around on deck before I even got that one myself.

Q. (By Mr. Hinslea): Now, mail is also put aboard at the Soo, is it not? A. That's right.

Q. There is a supply boat that comes out and the mail is put aboard? A. Yes.

Q. And that is distributed the same way while the ship is en route? A. That is right.

Q. Yes.

Now, why are you so sure that you had a conversation with the captain on the 25th of May? A. I said about the 25th.

Q. Well, why are you sure, so sure it was about the 25th? A. Well, it was some—quite some time after I had shipped on the boat, five or six weeks, anyway, must have been somewhere around in there.

Q. Is that your only reason for placing it about the 25th of May? A. That is right.

Q. Now, why are you so sure it was about the 15th of April when you had another conversation with the captain? A. Well, that was just a few days after I had shipped on the—

Q. Now, when was the third conversation that you had with the captain, what date was that, about what date? A. Fifth day of June.

Q. And when was the fourth conversation you had with the captain? A. I didn't have a fourth one that I know of.

Q. Well, you said that—I have a note that you did have a fourth conversation, when the captain asked you if you were an organizer or just a good member? A. I think that was the second one, wasn't it?

Q. I don't know. You were there. I wasn't there. How many conversations did you have with him? A. Three or four.

Q. Three or four? A. I don't know which.

Q. Well, now, you know the dates. When was the date of the first one? A. About the 15th of April.

Q. And when was the date of the second one? A. I don't know.

Q. Well, you testified it was the 25th of May. Do you want to change your testimony?

Mr. Belkin: Just a minute, I object to that. I believe he testified the second conversation was two weeks after the first one.

Trial Examiner Leff: That is right, that is my recollection.

Q. (By Mr. Hinslea): All right, when was the second one? A. I believe they answered the question.

Q. Well, answer it again. A. About two weeks after the first one.

Q. And when was the next one? A. About five or six weeks.

Q. Well, give me the date. A. I don't keep dates.

Q. You are not sure when the third conversation was, except— A. The period of about five or six weeks, yes.

Q. And when was the fourth one? A. The last one I had, I don't know whether it was the fourth one, it was the fifth day of June.

Q. And how do you fix that? A. It came after the— after June 4th, which was on Sunday in Two Harbors, two days before the election.

Q. How do you remember it was Sunday? A. Because I was there.

Q. Is that the only way you remember, that you were there? A. Yes, sure.

Q. And were you in Two Harbors the 11th of June, on a Sunday? A. 11th of June?

Q. Yes. A. I don't know where we was on the 11th.

Q. Where were you on the 1st of June? A. I do not know.

Q. Where were you on the 25th of May? A. I don't know.

Q. But you do remember you were in Two Harbors on a Sunday on the 4th of June? A. That's right.

Q. But you remember no other dates? A. That's right.

Q. Now, Mr. Anderson, Two Harbors is a very small town, is it not? A. Very small.

Q. And there is only one street, isn't there? A. I believe that is all there is there.

Q. One main street? A. Right.

Q. That main street only extends about three blocks? A. That's right.

Q. In other words, it is just a village, isn't it? A. Right.

Q. And when you walk down this main street for two or three blocks doing whatever shopping or whatever you have to do, you do have to pass by the NMU hall, don't you? A. Yes.

Q. That is a store right on the main street? A. A store?

Q. It was a store before? A. I don't know what it was.

Q. It is right on the sidewalk, I mean you go right off the sidewalk? A. Yes.

Q. And there is a large store window there, isn't there? A. You probably know more about it than I do. I couldn't say whether there is a big window or not.

Q. It wouldn't be difficult for anyone walking by there to look in, just like you look in any other window, is that right? A. That is right.

Q. You told the captain you belonged to the Union very shortly after you joined it, didn't you? A. That's right.

Q. And when did you get off the ship? A. 21st of June, I believe.

Q. That was right after the election, wasn't it? A. About ten days, 11 days, something like that.

Q. Why did you get off? A. I got tired of riding on it. I got off of my own free will.

Q. Now, this conversation with the engineer, was that the first or second assistant engineer? A. First assistant.

Q. First assistant? A. Yes.

Q. Was that at coffee time, or in the evening when you were in there eating before going on watch? A. Well, yes, it was coffee time. All that time was coffee time. You can get coffee any time you want at night.

Q. Well, just tell me what time of day or night it was? A. Oh, I should judge it was about 9:30 in the evening.

Q. What watch were you on? A. Two to six.

Q. And was the first assistant—he is on the same watch, isn't that right? A. That's right.

Q. So that he would have had to leave the engine to come up there, wouldn't he, he is the only one in the engine room, only licensed one in the engine room? A. The first assistant is on the two to six, the same as myself.

Q. The question I am getting at is, if he came up—it was at nine o'clock at night, you were off watch, and he was off watch? A. That is right.

Q. You have supper about six o'clock? A. That is right.

Q. What time do you turn in at night? A. Sometimes I wouldn't even go to bed, depended on whether I was sleepy or not.

Q. Did you play poker? A. I might have organizing to do.

Q. Well, we hope you were.

But you definitely think it was 9:30 at night. Was that the first conversation or the second conversation? A. The first one.

Q. Now, do you remember the date of that? A. Well, I have no date.

Q. You have no date on that one? A. No.

Q. Now, the second conversation, do you have a date on that? A. No.

Q. And what time of the day or night was that? A. About the same time.

Q. About 9 or 9:30? A. Yes.

Q. Was it your habit of going back to the mess room at 9 or 9:30 at night and getting a cup of coffee? A. Generally.

Q. And did you see the second engineer every night when you went back to get a cup of coffee? A. Pretty near every night.

Q. But these are the two times that he made any statement about the Union? A. Yes.

Q. Now, did he just do that voluntarily, Mr. Anderson, or was that in the course of some argument among the men? A. Well, there wasn't no argument, just a matter of a conversation that worked up to that.

Q. Well, did he volunteer it, was he the first one that said that? He just said that and then shut up? A. Well,

there was so many people talking back and forth about different things that naturally it worked into that.

Q. That is, you were talking with the unlicensed fellows in the mess room, and then he just interjected that in the conversation, is that right? A. That's right.

Q. Now, what is a gas hound? A. Gas hound?

Q. Yes. A. I believe the first assistant must know what it is.

Mr. Belkin: I was about to object, but I shan't. I think it is kind of immaterial.

Mr. Hinslea: Well, they accuse the first engineer of using the word "gas hound."

Trial Examiner Leff: Well, what is a gas hound?

Mr. Belkin: I will stipulate on that.

Mr. Hinslea: What is it? I know what it is, but let us have it in the record.

Trial Examiner Leff: Do you know what it is, Mr. Witness?

The Witness: I have heard it lots of different times.

Trial Examiner Leff: What does it mean to you?

The Witness: A chronic drunk.

Mr. Hinslea: That is what I am getting at. I wonder why the assistant used "gas hounds" and "drunks" if "gas hounds" means "drunks."

Mr. Belkin: I object to that. Of course it is not within the realm of this witness' knowledge to know the reason why the first assistant may or may not have used the two terms together.

Trial Examiner Leff: I will sustain the objection. Do they mean the same thing, "drunk" and "gas hounds"?

The Witness: Generally, yes.

Mr. Belkin: I know this is kind of funny, I can't help laughing about it, but it seems to me that "gas hound" has a different connotation than that given by the witness.

Mr. Rosenfeld: Mr. Belkin, will you please—

Trial Examiner Leff: Are you making some sharp distinction as to a constant drunk?

Mr. Rosenfeld: I think Mr. Belkin is making—

Mr. Belkin: Pardon me for being facetious.

Q. (By Mr. Hinslea): Did you argue with the first assistant about the statements? A. I never argue.

Q. You didn't enter into the conversation at all, then? A. Oh, yes, sure, but I don't argue. I discuss.

Q. Well, maybe we are using the wrong word. Did you discuss that with him? A. I did.

Q. What? A. I did.

Q. In a very quiet manner? A. That's right.

Q. And you told him that wasn't true? A. That's right.

Q. What did you tell him wasn't true? A. The statements that he made.

Q. What? A. The gas hounds and drunks hanging around corners.

Q. To the gas hounds and drunks hanging around corners? A. He referred to the Union men as being gas hounds and drunks.

Q. That isn't what he said, is it? A. And that the money that the men would pay into the Union would be to support gas hounds and drunks hanging around the corners.

Q. Did he add "hanging around the corners"? I didn't get that. Did he say that? A. Yes.

Q. He said he wouldn't pay over 50 cents a month? A. That is right.

Q. And you argued with him about that? A. Well, I didn't, as far as I was concerned, I didn't care if he never paid anything a month.

Q. I see. A. That wasn't part of my theory of organizing of whether he paid a dime or nothing.

Q. Was Sims an organizer? A. I understand he was.

Q. Now, he left the boat before the election, didn't he? A. No.

Q. He was on the boat at the time of the election? A. That's right.

Q. You are sure of that? A. Quite sure.

Q. So if he was an organizer that didn't make much impression on him, did it?

Mr. Belkin: I object to this questioning.

Trial Examiner Leff: Yes, sustained.

Mr. Hinslea: That is all.

Re-Direct Examination.

Q. (By Mr. Belkin): Mr. Anderson, you have sailed the Lakes for a good many years, as I understand, is that true? A. Yes.

Q. Will you just tell us what your experience has been on the Lakes? A. Well, ordinary seaman, A.B., wheelsman, watchman, deck watch.

Q. While you were on board—for how many years? A. I started in 1908, for about 36 years.

Q. Have you had any period since 1908 when you were on shore for a considerable period of time? A. No.

Q. How many years were you on shore? A. Well, never was any ships when I was on shore.

Q. Then I take it for almost a continuous period of 36 years you have been sailing ships on the Great Lakes? A. That is right.

Q. Now, in the course of your shipping experience, to what people have you been responsible aboard ship? A. I am responsible to the mate that I am on watch with, and also with the captain.

Q. And who are the mates with whom you have served watches? A. Well, there is first mate, second mate, third mate.

Q. What if anything was the authority that these men had over you? A. They had all the authority.

Q. What could they do? A. Well, they could hire me, they could fire me, they could give me work to do and I have got to do it.

Q. Were you ever hired or fired because of a mate's recommendations? A. Well, I have been fired, but without any explanation.

Trial Examiner Leff: By a mate?

The Witness: By the mate.

Trial Examiner Leff: By any one of the three mates?

The Witness: Any one of the three mates.

Q. (By Mr. Belkin): Have you ever been fired by a third mate? A. Oh, yes, sure.

Q. Ever been fired by a second mate? A. Yes.

Q. Ever been fired by a first mate? A. Yes.

Q. Have you ever been disciplined by any of the mates? A. Oh, lots of times.

Trial Examiner Leff: And criticized?

The Witness: Criticized.

Q. (By Mr. Belkin): For your failure to do a certain job, or other omissions or commissions of conduct? A. Well, I don't know as that has anything—

Trial Examiner Leff: What difference does that make?

Q. (By Mr. Belkin): Are you familiar with the status of engineers on board the ship? A. Status of engineers?

Q. Yes. A. No.

Mr. Belkin: All right, that is all.

RE-CROSS EXAMINATION.

Q. (By Mr. Hinslea): Did the licensed officers when they criticized or disciplined you, did they ever use profane adjectives, use any profanity? A. That is generally the general language aboard the ship.

Q. They all use profanity, don't they? A. Yes, they do.

Mr. Hinslea: That is all.

(Witness excused.)

Mr. Belkin: At this time I would like to offer in evidence Board's Exhibit 5 which is a stipulation for certification upon consent election in the matter of the Pittsburgh Steamship Company and National Maritime Union of America, CIO, signed on behalf of the Pittsburgh Steamship Company by A. H. Ferbert—I should say that the name is printed in, rather than signed, also by Louis Plost, Field Examiner of the Board, and by Walter E. Taag, Regional Director of the Board, and for the National Maritime Union by Frank Jones, Port Agent of that Union.

Trial Examiner Leff: Is there any objection?

Mr. Hinslea: May I see it, please?

Trial Examiner Leff: Off the record.

(Discussion had off the record.)

Trial Examiner Leff: On the record.

Mr. Hinslea: I have no objection.

Trial Examiner Leff: Board's Exhibit 5 is received in evidence.

(The document above referred to was marked Board's Exhibit No. 5 for identification and received in evidence.)

Mr. Belkin: (To the reporter): Mark this as Board's Exhibit 6.

(Thereupon, the document above referred to was marked Board's Exhibit No. 6 for identification.)

Mr. Belkin: I would like to offer in evidence what has been marked for identification as Board's Exhibit No. 6, which is the Decision and Order of the Board, Case No. 8-R-1324, in the matter of the Pittsburgh Steamship Company and National Maritime Union of America (CIO) signed at Washington, D. C. on the 29th of June, 1944, by the members of the National Labor Relations Board.

Mr. Hinslea: No objection.

Trial Examiner Leff: Board's Exhibit No. 6, heretofore marked for identification, is now received in evidence.

(The document heretofore marked Board's Exhibit No. 6 for identification was received in evidence.)

Mr. Belkin: At this time I would like to call Mr. Sims to the stand.

JOHN M. SIMS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Q. (By Mr. Belkin): Will you tell us your full name and address, please, Mr. Sims? A. John M. Sims, (spelling) S-i-m-s, 1627 Shakespeare Street, Baltimore, Maryland.

Mr. Rosenfeld: Excuse me, is that spelled (spelling) S-y-m-s?

The Witness: No. (Spelling) S-i-m-s.

Q. (By Mr. Belkin): Were you ever employed by the Pittsburgh Steamship Company? A. Yes, sir, I was.

Q. And when were you so employed? A. From March 31, 1944, to about June 12. I am not sure about that.

Q. What was the name of the ship upon which you sailed? A. Horace Johnson.

Q. What was your job aboard that ship, Mr. Sims? A. Oiler.

Q. How long have you been sailing the Great Lakes? A. Well, the Great Lakes, I was up here in 1922, '3 and '4, parts of the season, and part of the season of '44.

Q. For whom did you work in the 20's on the basis of the years you have given us? A. Well, various companies, in 1922 and '3. 1923 it was—Hanna Steamship Company, I believe.

Q. And in the other year? A. In 1924 I was on a Pittsburgh ship.

Q. What ship? A. The James A. Farrell, the latter half of the season.

Q. Now, in the course of your sailing experience on the Great Lakes, did you become familiar with the authority of the assistant engineers on board the ships? A. Yes, sir.

Q. Now, can you tell us, Mr. Sims, what if any authority the assistant engineers had over you as an unlicensed oiler? A. Well, any watch engineer, that is first, second or third, or any licensed engineer, for that matter, is my superior officer, and not only can he fire me, or have me fired if I refuse any legal order, he can cause me to suffer loss of my certificate.

Q. Just what procedure would be gone through in order to cause a loss of your certificate? A. Well, he give me an order to do some job out on the lake, or out at sea, on an ocean-going vessel, it is applicable to both, I am sure, I believe. If he said oil that engine and I didn't do it, the engine burned up due to the fact that I didn't—I refused, all he would have to do is take me before the steamboat inspectors, and today the Coast Guard, and have my certificate removed.

Q. Now, Mr. Sims— A. And—

Q. Were you going to say something? Excuse me, were you going to say something else? A. For refusing a legal order. Of course, he couldn't tell me to jump into a boiler, that wouldn't be legal.

Mr. Hinslea: Jump into what?

The Witness: In the furnace.

Q. (By Mr. Belkin): Mr. Sims, to your knowledge was any seaman caused to lose his certificate as a result of a recommendation of any of the assistant engineers? A. Oh, yes, sure. I was on a ship—this was an ocean-going vessel. And, let's see, it was in May. An oiler on there lost his certificate because he burned up parts of the engine on two occasions and he didn't feel the engine so often,

which was—that had to do with burning it up, as the first assistant had told him to do this every half hour, to feel the engine. Well, he burned it up in convoy, and he lost his certificate as an oiler.

Q. Who recommended it, to your knowledge? A. The first assistant, I am sure.

Q. You say this occurred on other occasions? A. I know of some, but this one is more recent and is clear in my mind. I will tell you the name of the ship.

Q. Yes, go ahead. A. It was a Lockenback ship. I will just have to think a minute.

Trial Examiner Leff: I don't think it is important. This was an ocean-going vessel?

The Witness: Yes.

Trial Examiner Leff: Is the authority as you observed it of the assistant engineers on the Great Lakes the same or different than the authority of assistant engineers on ocean-going vessels?

The Witness: The same.

Trial Examiner Leff: And is the authority as you have observed it of the assistant engineers on the Pittsburgh line the same as it is on other lines?

The Witness: Yes, sir.

Q. (By Mr. Belkin): And while sailing on vessels on the Great Lakes, including the Pittsburgh Steamship, have you ever been disciplined or criticized by any assistant engineer? A. Well, I can't recall as having been disciplined or criticized.

Q. Have you ever seen or heard an assistant engineer discipline or criticize any member of his watch? A. I have.

Q. On a Pittsburgh steamship? A. Pittsburgh steamship.

Q. Can you tell us when and where this occurred? A. On this Horace Johnson. The first assistant criticized a fireman for not keeping up steam. And I guess he used a lot of oaths. Well, I wouldn't say just what the words were, for not keeping the steam up. And they were criticized, and eventually one of them was fired by the first assistant for not doing his work properly and when he was drinking.

Q. Do you know what the name of that man was? A. I can't remember. He was on the same watch. He was a fireman.

Q. He was a fireman on the same watch? A. On the two to six watches.

Q. Now, Mr. Sims, do you recall the names of the licensed personnel aboard the Horace Johnson? A. Captain Wallace; Chief Mate's name is Mr. Bauman; I believe the Second Mate's name was Brown; Chief's name was Leng; First Assistant's name was Kermit Anderson; and the Second we called Charlie, as well as I recall.

Q. Were you a member of the NMU while aboard that ship? A. Yes, sir.

Q. Did you engage in any organizational activities for the Union? A. Yes, sir, I was a volunteer organizer.

Q. What were your activities? A. Distributing the various NMU literature at hand, the Pilot and certain leaflets and talking to the men about the conditions and how much better they could be if it was an NMU ship and had NMU conditions and pay and living conditions, and that sort.

Q. I will hand you what has been marked as Board's Exhibit 2, and ask you if you have ever seen that before? A. Yes, sir.

Q. When and where did you see it, Mr. Sims? A. I saw it on the Johnson, oh, sometime in May. This one—this one was hanging over the engine room log desk.

Q. Do you know how it got there? A. I do not.

Q. I hand you what has been marked as Board's Exhibit 3, and ask you if you have seen that before? A. Yes, I saw this the same place along about a few days before the election, about the time of the election.

Q. It was hanging up? A. Over the log desk in the engine room, the engine room log desk.

Q. Do you know how it got there? A. I do not know.

Q. I hand you what is marked as Board's Exhibit 4 and ask you if you have seen that before? A. Oh, yes, I saw this.

Q. Where did you see this? A. On the Horace Johnson.

Q. Where on the Horace Johnson? A. The second mate handed me a copy of this.

Trial Examiner Leff: Was he distributing mail at the time?

The Witness: No, he wasn't. He had this in his hand. He handed it to me to read it.

Q. (By Mr. Belkin): Did he have other copies of this pamphlet in his hand? A. Well, I don't remember really whether he did or not.

Trial Examiner Leff: Was it in an envelope when he handed it to you?

The Witness: No, it was like this.

Q. (By Mr. Belkin): Where were you when you received it? A. In my room, in the oiler's room.

Trial Examiner Leff: Incidentally, did you receive Board's Exhibits 2 and 3 or either one of them by mail?

The Witness: No, sir; no. I didn't get them by mail. I received them.

Q. (By Mr. Belkin): Can you tell us when you received it? By when I mean what month of the year you received Board's Exhibit 4, this pamphlet? A. That is hard. That must have been sometime in May, but I was on the ship sometime before I saw it.

Q. Now, Mr. Sims, while you were on board the Johnson, did you at any time discuss the Union with any member of the licensed personnel? A. Yes, sir.

Q. With what members of the licensed personnel? A. With the captain and with the second assistant engineer, and there was some little discussion with the second mate.

Q. You then discussed the union matters, I gather from your testimony, with the captain as well as the assistant engineer?

Mr. Ray: Second assistant engineer.

The Witness: I didn't get the question.

Q. (By Mr. Belkin): Well, I was saying that from your testimony I gather you have discussed the Union with the captain, with an assistant engineer, Mr. Ray says the second assistant engineer, is that correct? A. The first assistant engineer, Mr. Anderson.

Trial Examiner Leff: Incidentally, at that time, in 1944, when you were on the Horace Johnson, was the NMU seeking to make any efforts to organize licensed personnel?

The Witness: No, sir. We don't—NMU does not organize licensed engineers or mates. That is the M.E.B.A. That is a different organization.

Trial Examiner Leff: Is that a CIO organization?

The Witness: Yes, sir.

Mr. Rosenfeld: Marine Engineers Beneficial Association.

Mr. Ray: Benevolent Association.

The Witness: And the Masters, Mates and Pilots Deck Organization, that is an AFL affiliate.

Mr. Belkin: Now, where do we stand on the record?

Trial Examiner Leff: Were they organizing licensed personnel at that time?

The Witness: Not to my knowledge.

Mr. Belkin: I think I was in the midst of a question.

Trial Examiner Leff: I am sorry. I just wanted to get it straight while I had it in mind.

Mr. Belkin: I would like to begin my question over again, if the Examiner please.

Trial Examiner Leff: Yes.

Q. (By Mr. Belkin): I think you were testifying that there were three members of the licensed personnel with whom you discussed the Union, namely, the Captain, the second assistant engineer— A. The first assistant engineer.

Q. The first assistant engineer? A. Yes.

Q. And the second mate, is that correct? A. That is right.

Q. Now, directing your attention to your conversations with the captain, can you tell us when and where they occurred? A. Well, the first time I had any conversation with the captain, which was only brief, we grounded at— near Port Huron, the ship went aground. And previous to that there had been some shipwrecks, so I met him on the deck, and he said, "I suppose you are going to give me headlines in the Pilot, like the other poor fellows did for having an accident?"

"Oh," I said, "No. You are a human being the same as anyone. When you make a mistake, why, if it isn't your fault, we wouldn't try to blast you in The Pilot."

So that was the end of that.

Q. Was there anything else that was said? A. Well, we had to go in drydock sometime after that.

Q. That was all at that time? A. That was all at that time.

Q. And do you recall just when that conversation occurred? A. It was the latter part of May.

Q. All right. Then you were saying you went into drydock? A. That is correct.

Q. Is that where another conversation with the captain occurred? A. Yes.

Q. Where was your drydock? A. Lorain, Ohio.

Q. Will you tell us just what was said when you and the captain had a conversation? A. Well, he was aft one day. I don't know whether it was a week end or a holiday. And we got in a conversation about the Union. He wanted to know, "Can I take my crew with me if I leave now—if you people come up here and take over our ships, and I want to leave the ship next year, can I take all my deck gang with me in case I get another ship?"

So I told him, "I don't really know. I couldn't give you any definite answer on that. If you want to take your crew and chase the crew off another ship, why, that hasn't been decided by the Union, no contract."

And he said, "What is more, you people are going to cause, you CIO people, you are going to cause these men to lose their bonus." He said, "These men get a bonus at the end of the season. You're gonna come up here and try to start overtime, and Pittsburgh isn't going to give them the bonus, and they are going to lose all these things."

He said, "We had a union up here some years ago, 1909 or 1910 or 1912, or some time. And it was a failure. And I don't want any part of it on my ship."

And further on he said, "Now," he said, "this old Anderson on here, he is a great Union man—"

Mr. Hinslea: What?

The Witness: He says, "He is a great Union man." And it was a holiday or something at the time, he had a day off to come to Cleveland, Anderson did. So he said, "If he comes back drunk, if I catch him with a drink on him, well, the first chance I get I am gonna fire him."

So I said, "Well, he is an old man, he is a good wheelsman, isn't he?"

And the captain said, "Yes, he can wheel a steamboat, sure he can, but the first chance I get I am gonna fire him."

Q. Was there anybody else present at the time? A. There was somebody on the sidelines, but I don't recall, I can't say definitely.

Q. Do you recall whether the person on the sidelines was a member of the unlicensed personnel on the ship or not?

Mr. Hinslea: He said he didn't remember definitely.

The Witness: I think it was a porter, I am not sure about that.

Q. (By Mr. Belkin): Now, was there any other conversation with the captain in which you engaged or in part participated while on board the ship? A. I don't remember.

Q. Now, directing your attention to the conversations which you testified you held with the—I don't quite get this, whether it was the first or second engineer? A. First assistant engineer.

Q. What is his name? A. Kermit Anderson.

Q. That is the other Anderson? A. Yes.

Q. Now, do you recall when and where you had conversations with the first assistant engineer, Anderson, Kermit Anderson? A. In the galley in the evening after the evening meal. We used to go in for a cup of coffee, and on one occasion Mr. Anderson said, "Any man who will pay over—who will pay $2.50 a month dues is a God damned fool."

And he went on to say that 50 cents a month is enough for any man to pay for any union.

Q. This occurred, as you say, in the galley. Do you recall when it occurred? A. Oh, it wasn't too long before the election. It was in the month of May, I would say. I couldn't say what day.

Q. By the way, was there anyone else present at the time? A. Oh, sure, there were several there. I remember the wheelsman was there and a fireman.

Q. Do you know his name? A. Anderson.

Q. Wheelsman Anderson was there? A. He was there.

Q. And who else? A. A fireman by the name of Burk was there.

Q. Did you have another conversation thereafter with Kermit Anderson? A. Well, I had a lot of conversations. He was my watch engineer. I was oiling for him. We had many conversations in the engine room.

Q. Would anybody else be there at these conversations? A. Well, sometimes a coal passer would be around, but he wouldn't have much time—when he would come out there he had to work all the time.

Q. What if anything did Kermit Anderson say to you down there in the engine room? A. Well, one night I remember in particular it got pretty hot. He said, "The CIO isn't going to last always." He said, "President Roosevelt isn't going to live always, and when he dies all the Jews, the God damned Jews are going to be out and we will have a different set-up."

So I said, "Where do you get your ideas from? The Chicago Tribune that you always insist on buying when you get the papers?"

So he was becoming a little violent, sometimes, and I would have to make my escape then toward the engine, to feel the engine, make myself busy.

On another occasion—now, we had many conversations on nights, on Sundays, down there between rounds. On another occasion Mr. Anderson became more or less violent before the conversation closed. He said, "You are going to bring—you and your CIO if you do win this election, you are going to bring up a lot of goddam niggers from the coast, and they are going to try to put one in every room."

Trial Examiner Leff: Will you read the last answer, please?

(Record read.)

Q. (By Mr. Belkin): He said they are going to try to put one in every room? A. He said, "That won't work up here." He said, "We had a lot of niggers in the Steel Trust years ago. But," he said, "We are getting less now."

He said, "How would you like to eat and sleep with a nigger?"

So I said, "What do you mean? In a lifeboat or some safer place?"

Well, he became violent then, so I had to move away to the engine or someplace.

And we had—I remember these two particular ones when he became more or less violent at the end of it.

Q. You testified you had a conversation—you had conversations with the second mate on matters touching the Union? A. Yes, sir.

Q. Will you tell us when and where those occurred? A. Well, the second mate would run around the deck, he would have his nose in our room six or eight times a day. And every time he would see me, he would say, "You are going to cover the waterfront, you are going to police the beach, you are going to patrol the shoresides, you are the ship's delegate if the NMU wins the election, heh, heh, heh. Who is the ship's delegate today?"

Now, he would have his nose in our room every time he went to eat, and every time he went to eat and every time he came by the oiler's room.

Q. Would anybody else be present when he made the statements to you? A. I think everybody on the ship must have heard it at one time or another.

Mr. Hinslea: I object to that "must have heard it."

Trial Examiner Leff: Well, let's see, before you make that statement, you say everybody on the ship must have heard it one time or another, why do you make that statement?

The Witness: Well, he yelled it across the deck when we were in drydock from shore to the ship. And in the room, he didn't speak there in an undertone. He would stick his nose in our room and say these things.

Trial Examiner Leff: Were other people around?

The Witness: Yes. I will tell you an oiler by the name of Ray Carlstrom, he heard it over and over. A wheelsman by the name of Anderson—I can't remember this other oiler's name. These names that I can remember they heard it.

Trial Examiner Leff: How do you know they heard it, were they nearby?

The Witness: Sure, they were in the room on several occasions. Then he would say, "How much propaganda have you got on the desk?" There was a desk in our room where we used to put the Pilots and various leaflets. And he was ridiculing. "How much—what have you got on this desk today? What have you got there anyway? Who is your assistant delegate today? Have you got a different assistant delegate today?"

So I would try to laugh it off. That is the best I could do.

Q. (By Mr. Belkin): You said you could tell us the names of some of the men who were present when these

conversations occurred? A. Yes, he has two names there, Carlstrom and Anderson.

Q. Is there anyone else? A. I couldn't name anyone else off hand.

Q. Now, Mr. Sims, was there any time when any of the licensed personnel threatened you with dismissal because of your Union activities? A. Yes, sir.

Q. Will you tell us when and where that occurred? A. The captain of the vessel told the first assistant to fire me.

Trial Examiner Leff: How do you know?

The Witness: A porter and a coal passer overheard it.

Mr. Ray: I object to that.

Trial Examiner Leff: What are you objecting to?

Mr. Ray: Objecting to the testimony.

Trial Examiner Leff: Do you want to strike out the last part and leave the rest?

Mr. Ray: I want to strike out—

Trial Examiner Leff: We will let it stand and the record will indicate to what extent it is hearsay.

Q. (By Mr. Belkin): Did the porter and coal passer speak to you concerning this incident? A. First they told the oiler, the oiler told me that night, the next morning when he relieved me. So I asked the coal passer and the porter, they said, "Certainly—"

Q. Just a minute, Mr. Sims. Can you tell us what the names of these two men were? A. The coal passer was on the same watch I was on, but I don't know. But the porter's name was Elmer.

Mr. Hinslea: Elmer? He is the fellow we are looking for.

Q. (By Mr. Belkin): Can you tell us just—

Trial Examiner Leff: You mean you want him as a witness?

Mr. Hinslea: Off the record, when I belonged to the American Legion, why, we were always looking for Elmer.

Mr. Belkin: Well, we are on the record?

Trial Examiner Leff: On the record.

Q. (By Mr. Belkin): Mr. Sims, where did you talk to the coal passer and the porter? A. In the galley.

Q. And do you recall when this occurred? A. Oh, it was shortly before the election.

Q. And what if anything did you say to them, and what if anything did they say to you? A. I asked them, I said, "What about this, did you say the skipper wanted me fired?"

They said, "Yes, yes. We heard it last night. He told the first to get rid of that guy, fire him, and the first said, 'I can't do it. I have no reason.'"

Mr. Ray: I am objecting to all of this line of testimony. Let the record so show.

Trial Examiner Leff: The time to make the objection is when the question is asked. I understand you to mean this, you want to point up in the record that this is hearsay testimony?

Mr. Hinslea: Yes.

Trial Examiner Leff: Very well, the record will show that.

Q. (By Mr. Belkin): Was there anyone else present when you discussed this matter with the coal passer and the porter? A. Not that I recall.

Mr. Belkin: You may cross examine.

CROSS EXAMINATION.

Q. (By Mr. Ray): Mr. Sims, you came up and went aboard the Johnson for the specific purpose of organizing that vessel, didn't you? A. Well, together with earning a livelihood.

Q. Yes, but your primary purpose was to organize, was it not?

Mr. Belkin: I will object to that question.

Trial Examiner Leff: I will allow it. It goes to the question of credibility.

The Witness: Well, I will have to answer it like this, if I couldn't earn a livelihood I wouldn't have been an organizer.

Q. (By Mr. Ray): Of course you had to earn a living. We appreciate that, but you had been earning a living on salt water, hadn't you? A. Oh, yes.

Q. And you came directly from the coast, did you not? A. That is right.

Q. And when was the election on your vessel? A. It must have been about the 9th or 10th, I am not sure.

Q. And you left in June? A. Yes, sir.

Q. You left on the 12th of June, you left of your own accord? A. That is right.

Q. Did you go back to the coast after that? A. I shipped on a vessel here at Cleveland and went down to the coast.

Q. Now at the time the captain met you on the deck and said I suppose you are going to give me a headline in The Pilot because of this accident—by the way, will you concede that captains of vessels are human beings? A. Yes, sir.

Trial Examiner Leff: I think I can take judicial notice of that.

Mr. Rosenfeld: We will stipulate if that is necessary.

Q. (By Mr. Ray): At that time, Mr. Sims, did the captain of the vessel know that you were an organizer? A. I think he did, yes, sir.

Q. There can't be much question about it, can there? A. No, I don't think so.

Q. Now, have you found it customary in the sailing you have done either on salt water or on the Lakes to have the Masters of vessels take you into their confidence as to whether they have an accident or not?

Mr. Belkin: Object—

Trial Examiner Leff: Objection overruled.

Mr. Belkin: No.

Trial Examiner Leff: You are withdrawing it?

Mr. Belkin: I said "object" and stopped.

The Witness: There wasn't anything confidential about it, I don't think.

Q. (By Mr. Ray): It didn't occur to you it was rather unusual for the captain of a vessel to talk with an oiler as to whether he had handled his vessel properly and had an accident, and what would be done about it? A. He didn't mention anything about handling the vessel properly, he merely referred to the headlines in The Pilot.

Q. And you consoled him by saying he was a human being and made mistakes like anybody else, so it was quite a confidential conversation between the captain and the oiler, wasn't it?

Mr. Rosenfeld: I think I am going to object to the characterization of the conversation put on it by Mr. Ray.

Trial Examiner Leff: Answer the question.

The Witness: Well, may I have the question again?

Trial Examiner Leff: Read the question.

The Witness: Read it.

Mr. Ray: Read him the question.

(Question read.)

Mr. Rosenfeld: Just a minute.

Trial Examiner Leff: I am sure when he referred to it as confidential, a confidential conversation, he doesn't mean confidential in the sense that it is privileged, it means—

Mr. Ray: They were just being pals.

Mr. Belkin: I object to the question on this basis, it is a conclusion in this respect, I think the inference that Mr. Ray is trying to draw and to which I am objecting is that no one else was present, the witness has already testified there was no one else present.

Trial Examiner Leff: This is cross examination. I think remarks of that kind are proper.

Mr. Belkin: I am not objecting to the fact that he wishes to go into this thing, but that question in a sense becomes a conclusion on that kind of word, does it not, Mr. Examiner.

Trial Examiner Leff: I have ruled on the objection, let us proceed.

The Witness: My answer is in the negative. It is no.

Q. (By Mr. Ray): Have you ever had any other captain on any other vessel you have been on have a similar conversation with you, in which an accident in which the master was involved was discussed with you? A. Not to my recollection.

Q. Now, these conversations you had with the first assistant engineer, Mr. Sims, you stated on direct examination, you stated that the engineer became violent. Did he froth at the mouth? A. Oh, no, no, he didn't have rabies.

Q. Did he throw his hands around? A. Well, he did wave his arms on some occasions.

Q. Did he put his fist up under your nose? A. Oh, no.

Q. Did he push you? A. No.

Q. Did he take ahold of you in any way? A. No, there was no physical violence at any time.

Q. You said you had to retreat each time. Did you have a special place of refuge when he became violent? A. I could go in between the engine where there is a lot of machinery whirling around.

Q. You had a special place of refuge? A. There were several places such as where the cross heads go up and down.

Q. You had to put the engine between you and the first assistant each time he became violent? A. Not necessarily, but he being my superior officer, watch engineer, I couldn't afford to get into any sort of entanglements down there with him.

Q. And you had a regular, set place of retreat each time? A. No, I might go and get a water glass or something.

Trial Examiner Leff: In other words, you kept at arm's length.

Q. (By Mr. Ray): By the way, how big was this first assistant? A. Oh, he is about twice my size.

Q. About twice your size? A. Yes.

Q. How old? A. About 40, I would say, not over 40.

Q. How large are you? How much do you weigh? How tall are you? A. I am a little taller than he is, but he is much wider. I weigh about 135. He wouldn't be twice my weight.

Trial Examiner Leff: Anyway, you aren't in the same class.

Q. (By Mr. Ray): How tall are you? About 5, eleven? A. No, about 5, 8.

Q. About 5, 8?

Trial Examiner Leff: We haven't found two yet that we could match up.

Q. (By Mr. Ray): You didn't mean your statement literally that the second mate had his nose in your room, he had more than that, didn't he? A. Yes, he came in. On one occasion he was found in there, and he was the only one in there.

Q. He was found in there? A. That's right, after meals, sometime.

Q. What do you mean by that? A. Someone came in the room and he was in there, all alone.

Q. Just waiting for you fellows? A. I don't know. I suppose he was.

Q. Did you actually see him in the room? A. No, I didn't see him.

Q. Did someone tell you that? A. Someone told me.

Mr. Ray: I move it be stricken.

Mr. Belkin: It is your own question.

Trial Examiner Leff: Motion denied.

Mr. Ray: That doesn't make any difference.

Trial Examiner Leff: You move that what be stricken?

Mr. Ray: I move the statement that the man was found in the room be stricken, because he got that knowledge through some other person.

Trial Examiner Leff: The record shows that, doesn't it? What part do you want stricken, the part that indicates that his knowledge is hearsay?

Mr. Ray: The part that indicates that the fellow was in the room.

Trial Examiner Leff: Well, isn't that the purpose of cross examination to show that the witness in testifying he observed something couldn't possibly have observed it? We don't strike those things, the record will show what weight if any can be attached to his testimony.

Q. (By Mr. Ray): Now, at the time the second mate made these remarks about—that you were going to police the waterfront and do various other things, tell us where these people were that you say overheard the conversation? A. In the oiler's room on the deck of the ship.

Q. And where was the room located? A. On the starboard side, that would be aft.

Q. All right. Where on the deck of the ship were the other men? A. Over on the after part of the deck, all the way up to the stern on the top deck. On one occasion we were in drydock and he was walking about the drydock and yelling these things.

Q. How often did the mate do these things? A. Oh, I don't know exactly how often, it must have been a dozen times, out loud, where everybody could hear it, over a period of, I would say, a month, the month of May.

Q. Now, both at the time the second mate made these statements to you in the hearing of all these people and at the time the first assistant engineer used to discuss these

matters violently with you in the engine room, just tell us what your attitude was, were you ever violent, did your voice ever raise, or were you very decorous about the whole thing? A. Well, I had to be more or less subservient, due to his being my superior officer, and, of course, I wouldn't froth at the mouth towards him.

Q. You had the right to state your views—

Mr. Belkin: Let the witness finish his answer, Mr. Ray.

Trial Examiner Leff: Have you finished your answer?

The Witness: I would oppose his policies in so far as blasting Unions and the various positions he took on nationalities, and so on. And certainly I would give him an argument, but I wouldn't froth at the mouth or shake my fist at him, or anything like that.

Trial Examiner Leff: Who initiated these discussions?

The Witness: The first assistant would have a Pilot or something, and it would have the picture of a colored man on it. He says, "That is what you're gonna bring up here." That kind of thing. Show me the picture of colored people in The Pilot.

Q. (By Mr. Ray): Well, at the time you retreated to the security of the engines, kept at arm's length, was that because of fear of the first assistant engineer, or was it because you were so enraged that you wanted to get out where you could cool off yourself?

Mr. Belkin: Objection.

Trial Examiner Leff: Overruled.

The Witness: I never got so enraged at any time, because I couldn't afford to.

Q. (By Mr. Ray): You had perfect control of your self on all occasions? A. I did, yes, sir.

Q. Now, was the second mate your supervisor? A. Well, I was in the engine department, not directly, but more or less any member of the unlicensed personnel must at least be courteous to the licensed officers.

Q. You didn't take any orders from the second mate, at any time, did you? A. No, I didn't have to take them.

Q. He had no control over your work? A. No.

Q. Now, when the second mate was making these statements, repeatedly, what did you then do, did you become enraged, or did you walk off, or did you give him an argu-

ment, or just what did you do? A. I tried to laugh it off, because his ridicule was, to me, was making fun of the Union, and if I became enraged, then he would get his point, so I thought.

Q. Now, have you any way of knowing, except the fact that the second mate might have been talking louder than usual that any particular person heard those statements? A. Heard those statements? I gave two names, they are in the record.

Q. You said they were around, but how do you know they heard them? A. They were in the room, I am sure they were in the room when he made these statements. There was another oiler, but I can't think of his name, a Norwegian.

Q. Did the mate know you by name, or direct these remarks to you, or were they just general remarks addressed— A. He usually called me "delegate."

"Hello there, delegate. Hello, patrolman, who is your helper today? Who is the assistant delegate aboard ship today? Let us patrol the waterfront."

Trial Examiner Leff: What does that expression mean?

The Witness: Well, patrol the waterfront would evidently be walking about the waterfront.

Q. (By Mr. Ray): On vessels you have been on, and including the Pittsburgh vessels, have you found it unusual for members of the crew, including the licensed officers to kid back and forth and have more or less horseplay, or do you find that everybody is serious? A. That was exceptionally unusual with an officer toward a member of the unlicensed personnel.

Q. Have you found it on any other ships? A. Never have I seen anything like that on any ship.

Q. This was most unusual? A. It was.

Q. Did you make any complaint to anyone about the treatment you were getting from the second mate? A. I did not.

Mr. Ray: That is all.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Mr. Belkin: The Board rests.

Trial Examiner Leff: The Board rests?

Does the Charging Union have any evidence that it wishes to adduce at this time?

Mr. Rosenfeld: No, the Union rests with the Board.

Mr. Hinslea: Mr. Examiner, at this time Respondent is not prepared to go forward for the reason that upon the receipt of the Complaint, which is just general charges of coercive acts, I took it up with the Board, the Regional Board in an attempt—the Regional Director in an attempt to get specific acts, and to get the times and dates, but the Regional Director and attorney did not feel clear to do that, and it was understood that upon my motion for a continuance the Board, the Regional Director, would have no objection so as to allow me to investigate the charges.

Now, as the Examiner knows, many people have been involved in this case, and there have been charges against many of the officers, and there are a number of names of unlicensed personnel who have been present. The Pittsburgh Steamship Company has a fleet of 67 ships. The same men are not on the same ships. I can say that after I have checked it on Monday, I am going to check to see where these men are.

Now, notwithstanding some people will think we will be guilty of dilatory tactics, I will give the Examiner assurance that we will start as quickly as possible, by that I mean next week, to line these people up, and then I would ask that the Examiner and the Government attorney cooperate and take the testimony of these men if possible at some port where the ship comes in, either aboard the ship or at some place that is agreeable at the port.

Trial Examiner Leff: Wouldn't that be rather difficult? I mean we want them all here at one place, we can't travel all over the 67 ships.

Mr. Hinslea: Mr. Examiner, I wouldn't be a bit surprised, I wouldn't be a bit surprised that there are 20 to 25 ships involved with these men of that fleet, and would the Examiner suggest that the Pittsburgh Steamship Company bring in 25 ships and hold them in port and not carry iron ore and war material while taking this testimony? It just can't be done. The Company just couldn't agree to it. We can't order this fleet or part of this big fleet to stop. The Union itself admits that they have been investigating this thing a year.

Now, after we investigate this and ascertain what evidence we are going to produce, then comes the problem of trying to produce it. Now there might be some convenient way to do it. Certainly I don't want to be traveling from here to Chicago in a day, and you don't want to keep coming here from Washington every time a ship gets into a port.

Trial Examiner Leff: I would prefer not to do it if it can be avoided.

Mr. Hinslea: I would suggest we work out some way to get the testimony, and we will do it in a convenient way, and avoid traveling, I certainly don't want to travel myself, nor does the Examiner. But the first thing is to allow me—to give me some time, and I suggest four weeks to investigate this case before we present our testimony, then get together and arrange some method of taking this testimony, and then take it as quickly as possible without holding the ships up. We can't take licensed officers off the ships, there aren't any licensed officers, you can't hire licensed officers, there is a shortage. So that in order to take the licensed officers off the ships, the ships have got to go to dock, got to go to the port.

Mr. Belkin: Under normal circumstances, if we weren't faced with war, I would oppose very seriously the contention of the Respondent, but under the circumstances as they are, that in view of the war effort, we should make an effort to give counsel every opportunity to keep the flow of ships uninterrupted, and I am willing to even travel the circuit hoping that counsel will be reasonable in that request, and I am willing to do everything I can to give the Respondent a chance to put his case in.

Trial Examiner Leff: What do you say about the application for adjournment, first?

Mr. Belkin: I think we ought to permit the adjournment.

Trial Examiner Leff: Now, how could it be physically arranged so that the Trial Examiner might within the space of about, oh, two or three days, maybe even four days, hear all the witnesses, without the Trial Examiner having to travel back and forth from Washington?

Mr. Hinslea: Can we go off the record?

Trial Examiner Leff: Unless the Union wants to be heard?

Mr. Rosenfeld: With respect to the time suggested by Mr. Hinslea—

Mr. Belkin: Did he suggest a time?

Mr. Rosenfeld: Yes, he suggested four weeks. The Union objects to that, very strongly. There is no need for four weeks, whatever the physical problem may be. Certainly the Respondent can communicate with every licensed officer on board that fleet in a day or so. There are radios, the railroads and trains are available, and the whole investigation can take place in a matter of days or a week. There is no need for such a period of time for an investigation. Just isn't necessary, and the Respondent knows it.

The Union and the Board were in an entirely different position; there they had to find unlicensed personnel who are not permanently attached to any ship, had to find men who were sailing on salt water on long voyages, five or six months duration, voyages the extent of which and the place of which could not be made known because of security regulations. The Union also had posted in its Pilot the names of witnesses which had come to its attention, suggesing that they report to the Union at the first opportunity. In the course of a year we obtained not more than seven or ten. But the Respondent is not in that position. These licensed people are attached to this fleet, and can be communicated with on almost a moment's time, almost no time at all.

With respect to the physical problem of producing these people at a hearing, I think it is utterly absurd to expect the Board and the Examiner to travel from port to port picking the ships up. The Board refused the same opportunity to the Charging Union, where witnesses were found in out ports. Now what Mr. Hinslea is actually suggesting is that depositions be taken before a Trial—

Trial Examiner Leff: I don't think depositions would be very satisfactory.

Mr. Rosenfeld: That is precisely what he is suggesting.

Trial Examiner Leff: That might be a way of handling it, but it is very hard to determine credibility from a cold transcript, if the Trial Examiner does not have an opportunity to observe the witness.

Mr. Rosenfeld: Substantially that is what Mr. Hinslea is suggesting. If that is so, the Charging Union should

have been afforded the same opportunity when these men were found in out ports. They did go to the Board's Regional Office, but the only thing that was done there was take statements from them under oath, but that was the reason for an entire year elapsing before the hearing. There is no reason for another period like that to take place. Mr. Hinslea knows every one of these ships will be in Duluth every ten or twelve days, so you can take the testimony at Duluth and cover every ship within that period of time.

Mr. Belkin: How about Chicago?

Mr. Rosenfeld: I don't think it is true of Chicago.

Mr. Hinslea: Well, Mr. Examiner, I always feel more confident after I hear opposing counsel tell me how to try my lawsuit, and how to investigate it, but my opposing counsel completely forgets that there are also unlicensed men involved in here which I have got to find, or try to find. Now, certainly he doesn't ask I keep the trial of my case to licensed officers. I want to check these things, and I feel I should talk to these people. I feel that I should, by the process of elimination, first decide who I am going to present. I just can't do that by writing a letter. That is my problem. I would like, as I say, at least four weeks to do that. And then I think after that, when we are ready to go forward, I think a plan could be made at some port where these fleets might come in, and we will cooperate with the dispatchers of this fleet. It can't be done in three or four days. It might take a period of ten days waiting at some port, waiting for these boats to come in.

Trial Examiner Leff: Do you gentlemen want to remain on the record, or can we go off the record, and see if we can't arrive at some agreement that is satisfactory to all.

Mr. Hinslea: Very well.

Trial Examiner Leff: Off the record.

(Discussion had off the record.)

Trial Examiner Leff: On the record.

In accordance with our off-the-record discussion, the hearing in this proceeding will be adjourned until August the 28th at the same place, with the understanding that prior to that time counsel for the Board, the Union and the Respondent will get together and try to mutually agree upon a more convenient place of hearing, and, if necessary,

upon a more convenient date of hearing, when all witnesses whom the Respondent expects to call will be available. As soon as those arrangements are made, the arrangements should be communicated to the Trial Examiner in care of the Chief Trial Examiner in Washington, for his approval.

Mr. Rosenfeld: Let the record show that the Charging Union objects to the adjournment to August 28th on the ground that it is not necessary for the Respondent to have that much time to make its investigation and to produce its witnesses.

Trial Examiner Leff: There being nothing further at this time, the hearing is adjourned until August 28.

(Whereupon, at 12 o'clock, noon, Saturday, July 28, 1945, the hearing was adjourned until Tuesday, August 28, 1945, at the same place.)

Agate Bay Hotel
Two Harbors, Minn.
Tuesday, August 28, 1945

The above entitled matter came on for hearing, pursuant to adjournment, at 9:30 p. m.

(Appearances omitted.)

Trial Examiner Leff: The hearing is in order. The record will show that we are reconvening a hearing at the Agate Bay Hotel at Two Harbors, Minnesota. Will you call your witness?

RESPONDENT'S WITNESSES.

PHILLIP AMBROZICY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Q. (By Mr. Ray): What is your full name? A. Phillip Ambrozicy.

Q. What is your address? A. 514½ Street, Conneaut, Ohio.

Q. Are you an engineering officer on the steamer Sewell Avery? A. Yes, sir.

Q. Were you an engineering officer on that vessel during the spring of 1944? A. During the spring of 1944?

Q. Yes, on the Avery. A. No, sir.

Q. Were you an engineering officer on any other vessel operated by the Pittsburgh Steamship Company? A. I was on the steamer Perkins this spring.

Trial Examiner Leff: What spring?

The Witness: Spring of 1945.

Q. (By Mr. Ray): During the spring of 1944— A. During 1944 I was an officer on the steamer Morse.

Q. What was your rating? A. I was third assistant for a time, then I was temporary second for two months up until September 12th.

Q. How long have you sailed? A. This is my fifth season.

Q. What license do you have? A. Third assistant engineer, unlimited.

Q. How long have you had that license? A. Since October 9, 1943.

Q. While you were on the steamer Samuel Morse, were you acquainted with a seaman by the name of Arnold Weissflog? A. Yes, sir.

Q. During the time that you were on the Morse, did you or did you not hear any discussions involving the unions or the National Maritime Union in particular? A. Yes, I heard discussions.

Q. Where did those discussions take place, and can you fix the date with as much particularity as possible, the time they took place. A. If I remember distinctly, it was when I was second assistant, it was 9:30 we would go in there when we were on the ten to two watch and we would stay there from 9:30 to 10.

Q. Would you have discussions? A. Yes.

Q. Who ordinarily would be present during those discussions? A. Chief engineer, myself, oiler, fireman, coalpassers, usually some of the deckhands. Usually the place was pretty well filled up.

Q. Was Mr. Weissflog present during those discussions? A. Yes, he was present. I believe he was on the same watch I was at the time.

Q. Can you tell us in general what did take place at those discussions, what would be discussed generally, the nature of the discussions? A. They would have bulletins for the Pilot out.

Trial Examiner Leff: Who is they?

The Witness: Weissflog was in charge of putting up the bulletins.

Q. (By Mr. Ray): Where were those bulletin boards located? A. I believe there was a board fastened up on the wall of the mess room, then they put these cartoons there and things, take them up any place in the mess rooms.

Q. Cartoons, were they in the nature of posters? A. More or less posters, some of them were little articles they put up.

Q. Did you have the N.M.U. Pilot aboard the vessel? A. Yes.

Q. You were telling us what the nature of these discussions were when you referred to these bulletins. Will you go ahead and tell us what the nature of the discussions were as nearly as you remember them. We don't expect any details but just the general nature of the discussions. Were they discussions on union matters or not? A. They discussed what advantage the union would have on the boat and the disadvantage, and somebody would bring up how they do it on the coast and he would talk about the advantages they had under that union.

Q. Do you recall whether or not those discussions were of a violent nature or a peaceful nature? A. They were always of a peaceful nature.

Q. There wouldn't be any name calling or any threatening on the part of any officer? A. No, sir.

Q. During those discussions, Mr. Ambrozicy, did you hear the chief engineer at any time state that the N.M.U. was slandering the merchant seamen on the Great Lakes and that the only reason that the N.M.U. was on the lakes was to drive the old time lake seamen off the lakes and put communists and red stooges from the salt water in their places? I will ask you whether or not you heard the chief engineer make any of those statements about the N.M.U. A. No, sir, I did not.

Mr. Belkin: I don't object to asking him what, if anything, was said, but this is way beyond that point.

Trial Examiner Leff: Did a witness for the Board testify that such a statement was made?

Mr. Ray: I am reading verbatim from the record.

Trial Examiner Leff: Objection overruled.

Q. (By Mr. Ray): Did you hear the chief during those discussions make any statements of a threatening nature concerning the National Maritime Union?

Mr. Belkin: Objection.

Trial Examiner Leff: Sustained.

The Witness: No, sir, I did not.

Trial Examiner Leff: The witness' answer is stricken.

Q. (By Mr. Ray): Did you hear the chief make any statement which you felt was adverse to the union?

Mr. Rosenfeld: I object to that.

Trial Examiner Leff: Sustained.

Q. (By Mr. Ray): Now, you have testified concerning circulars that were placed upon the bulletin board. Were those circulars allowed to remain on the bulletin board? A. They were on there till they were all discussed, then somebody would throw them away. There was no rules against those bulletins being up there. They were not torn down by any officers.

Q. Were there any fights or name calling during these discussions.

Mr. Rosenfeld: I object to that as repetition.

Trial Examiner Leff: Let him answer it again.

The Witness: I never heard any name calling at all.

Q. (By Mr. Ray): Were there any fights? A. No fights that I know of. I don't think there was any fights at all.

Q. Can you tell us who usually started the discussions about the union matters? A. Weissflog was the organizer so he was discussing with the fellows right along. Any time a new bulletin came in he would bring up the subject of that bulletin, what it was all about. He would explain it.

Mr. Ray: That is all.

Trial Examiner Leff: Mr. Belkin.

Cross Examination.

Q. (By Mr. Belkin): I believe the chief engineer aboard your ship at that time was Mr. Haller? A. Yes, sir.

Q. Was he and Weissflog the ones who generally took up the cudgels in an argument in the mess room? A. They would all discuss it.

Q. Those two generally took opposite sides in an argument? A. They wouldn't take exactly opposite sides, they would agree on some things. They would discuss how they interpreted it.

Q. In the discussion and interpretations that arose between Haller and Weissflog, do you recall what Weissflog would say or did say? A. I don't recall.

Q. Do you recall what Haller said? A. No, I don't.

Q. Do you recall Haller talking at any time to Weissflog about rotary hiring? A. Yes.

Q. Every day from 9:30 to 10 in the morning in the mess room? A. This was in the evening I was present. I wouldn't be there the whole time. Sometimes I would come late, sometimes just for a cup of coffee, and sometimes not at all.

Q. And there might have been discussions in the mess room that you might miss out altogether? A. Yes.

Q. And there might be discussions of which you might miss a part? A. Yes, sir.

Q. Rotary hiring is one of the real issues as far as the men are concerned? A. The fellows that were in there didn't seem to know much about it.

Q. They were very much interested in it? A. Some of them were interested in it.

Q. Was Mr. Haller interested in that question, to your knowledge? A. I don't remember any special discussion on that subject.

Q. You don't deny that he could have discussed it though, do you? A. I don't know if he could have or not.

Q. But to your knowledge you say now that while you were present Mr. Haller at no time discussed rotary hiring? A. I don't remember any discussion while I was there.

Q. Never brought up the subject? A. He may have but I wasn't in there enough to hear.

Trial Examiner Leff: Would you say you never heard him discuss rotary hiring?

The Witness: I can say that in my presence, I never heard a full discussion.

Q. (By Mr. Belkin): You say you never heard a full discussion. Did you ever hear a partial discussion?

A. I heard the subject mentioned but I wasn't always in on the discussions.

Q. No, but you heard the matter mentioned? A. Sure.

Q. As a matter of fact, you heard Haller discuss it or mention it? A. I can't say I have heard Haller discuss it, but I have heard Weissflog and other officers.

Q. Officers never discussed it with Weissflog? A. Never heard them.

Q. And you never heard Haller discuss it? A. Never heard Haller discuss it.

Q. And you never heard Haller mention it either?

Mr. Ray: He has answered that about five times.

Trial Examiner Leff: This is cross examination.

The Witness: I never heard Haller mention it to Weissflog.

Q. (By Mr. Belkin): To whom did you hear Haller mention it? A. I didn't hear him mention it to anyone.

Trial Examiner Leff: What did Haller speak to Weissflog about?

The Witness: Well, those bulletins, there was all kinds of material there to discuss.

Q. (By Mr. Belkin): Isn't it true that the bulletins discussed rotary hiring? A. I never paid any attention to it.

Q. You never saw the bulletins? A. Never glanced at them.

Q. You knew that they were torn down. A. They weren't torn down until it was necessary to make room for other bulletins.

Q. Did you see Weissflog tear them down? A. I never saw him but I heard him mention somebody tearing them down.

Q. You never saw anybody tear them down? A. No.

Q. You don't know whether an officer took them down or not? A. I do not know that.

Q. As far as you know an officer might have taken them down?

Mr. Hinslea: Mr. Examiner, is there a complaint that an officer should not tear these down?

Mr. Belkin: This goes to the credibility of this witness. The sworn testimony in his direct he has said no officer ever tore the bulletins down.

Trial Examiner Leff: I think you have exhausted this line. Let us go on to something else.

Q. (By Mr. Belkin): While you were present in the mess room did you at any time hear Mr. Haller discuss leadership of the union?

Mr. Hinslea: Explain what you mean by leadership.

Q. (By Mr. Belkin): The men who led the union. A. I don't think I heard him mention that.

Q. You never heard him characterize the leaders of the union as communists and red stooges? A. No, sir.

Q. Were you present in the mess room on June 1st? A. Can't say I was present.

Q. Let me refresh your recollection. Were you present at the time on or around June 1st when Captain Gerlach came into the mess room and pulled Arno Weissflog out of the room?

Mr. Ray: Objection.

Trial Examiner Leff: I will allow it.

Mr. Ray: Exception.

Q. (By Mr. Belkin): Were you present at that time? A. No, sir.

Q. Were you present the day Arno Weissflog and certain others came up the ladder late at Conneaut, Ohio?

Mr. Hinslea: Same objection.

The Witness: No.

Trial Examiner Leff: Just a minute, let me rule on that. Well, let me put it this way. Did you ever see Weissflog come up the ladder late?

The Witness: No, sir.

Mr. Belkin: I have nothing more.

Trial Examiner Leff: Do you have any questions, Mr. Rosenfeld?

CROSS EXAMINATION.

Q. (By Mr. Rosenfeld): Now Weissflog was a member of the deck department? A. Yes, sir.

Q. And in your working hours you had little or nothing to do with him, is that true? A. No, sir.

Q. The deck officer would be the people who would deal with Weissflog? A. Yes, sir.

Q. And you say you were on the 10 to 2 watch? A. Part of the time.

Q. What watch were you on in April, 1944? A. Six to ten.

Q. So that in April 1944 you were not present in the mess room at 9:30? A. No, sir.

Q. I see. You went on the ten to two watch when? I mean what time during the season? A. It was about the middle of July, first part or middle of July.

Q. I see. Until that time you were not present in the mess room at 9:30 in the evening as a rule? A. No, sir, I was on watch.

Q. So that you could not have been present in the mess room on June 1st because you were on watch at that time? A. No, sir.

Mr. Rosenfeld: That is all.

RE-DIRECT EXAMINATION.

Q. (By Mr. Ray): Mr. Ambrozicy, how many times were you present when Weissflog and the chief engineer and these various members of the crew of the Morse were having these discussions. Can you give us an approximate number of times you were there when you can recall the chief engineer and Weissflog were together. Try to remember back and tell us the number of times you heard them discussing. Just an approximate number. A. I would say at least twenty.

Q. That covered what period of time, a month or two months or what? A. It covered about two months.

Mr. Ray: That is all.

Trial Examiner Leff: What months did that cover?

The Witness: Well, it would be July—no, it would be the latter part of July, and August.

Trial Examiner Leff: Was that after the election?

The Witness: Before the election.

Trial Examiner Leff: Wasn't the election in—

The Witness: In August, wasn't it?

Trial Examiner Leff: When was the election?

Mr. Belkin: June 6th was when it began.

Trial Examiner Leff: Having your memory refreshed as to the date of the election, would you care to revise your answer?

The Witness: I will revise the answer. I did forget when that election was.

Mr. Ray: Take your time and give us the month you say those discussions took place when you said you saw Weissflog and the chief engineer together.

The Witness: Could I ask which watch Weissflog was on?

Trial Examiner Leff: No, you cannot.

Q. (By Mr. Ray): You see you told us that you had seen them together on twenty different occasions discussing. Now the trial examiner has asked you which month the twenty discussions took place, and the election started on June 6th. With all that in mind, can you tell us the approximate period those discussions covered? A. I would say July and August.

Q. Was it after the election? A. It was after the election.

Q. Now was it customary on that vessel for you or any of the other officers or members of the crew to go in the mess room for coffee while you were on watch? A. No, sir.

Q. When you got in the boat, did that situation change or did you ever—did they relax the watches so that on those occasions you would go into the mess room? A. I would never relax my watch to go to coffee.

Mr. Ray: That is all.

Q. (By Mr. Rosenfeld): You say that these discussions at which you were present, in which Weissflog, the chief engineer Haller and other members of the crew participated, occurred in July and August? A. Yes, sir.

Q. You are quite sure of that now? A. No, I am not sure.

Trial Examiner Leff: Well, how do you fix the time? I realize that it is pretty difficult to remember an exact month after the lapse of a year. Do you fix it with reference to any other event? Could you do that? Let me put it this way. Are you quite sure that it was after the election?

The Witness: There was a lot of discussion before the election.

Trial Examiner Leff: And also after the election?

The Witness: When I changed watches, I can't place the time—let's see—

Mr. Ray: If the examiner please, let me interrupt.

Trial Examiner Leff: Let him answer the question before you read what the record indicates.

Mr. Ray: I think he is entitled to this assistance.

Trial Examiner Leff: Not until he has answered the question, you will have the opportunity. Read the question.

(Question read by reporter.)

The Witness: I can't place the exact time.

Trial Examiner Leff: Any further questions?

Q. (By Mr. Ray): Mr. Ambrozicy, in Mr. Weissflog's testimony, given at the hearing in Cleveland, he testified that he was on the Morse from the end of March to June 28, 1944. With those dates in mind, does that assist you in telling us with more particularity when those discussions took place? The period they covered?

Mr. Belkin: Objection. I don't think that is proper re-direct examination, if the examiner please.

Trial Examiner Leff: I will allow it.

Mr. Ray: I will withdraw the question. That is all.

Mr. Belkin: That is all.

Mr. Rosenfeld: No further questions.

Trial Examiner Leff: The witness is excused. Off the record.

(Discussion off the record.)

Trial Examiner Leff: On the record. We shall adjourn the hearing to Duluth at 2 A. M. on August 29th. I think at this point we should indicate in the record the procedure that we are following. In view of the fact that all of the respondent's witnesses, or at least a large portion of them, are now sailing the Great Lakes in the respondent's vessels, it has been agreed among the Board, the Union and the respondent that the hearing is to be conducted at the ports of Duluth and Two Harbors, Minnesota from time to time as the vessels arrive at those ports. The hearing is to go on whenever the vessels arrive and the witnesses are available. We shall now adjourn to the Hotel Duluth.

(Whereupon at 10:30 p.m. a recess was taken until 2 a.m., August 29, 1945.)

Hotel Duluth,
Duluth, Minnesota,
Wednesday, August 29, 1945.

The above entitled matter came on for hearing, pursuant to adjournment, at 2:00 a. m.

(Appearances omitted.)

Trial Examiner Leff: The hearing is in order.

CLARENCE EMIL GERLACH, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?
The Witness: Clarence Emil Gerlach.
Trial Examiner Leff: What is your address?
The Witness: You mean my home address?
Trial Examiner Leff: Yes.
The Witness: 533 Shelby Street.
Trial Examiner Leff: What city?
The Witness: Sandusky, Ohio.

DIRECT EXAMINATION.

Q. (By Mr. Hinslea): Captain, do you hold a master's license? A. Yes, sir.

Q. How long have you held a master's license? A. About 1930—I don't just recall the date, but it was 1930.

Q. In 1944 were you in command of a ship? A. Yes, sir.

Q. What was the name of the ship? A. Samuel F. B. Morse.

Q. Did you sail her the entire season? A. Yes, sir.

Q. When did you report to the ship in the spring of the year? A. April—I just don't remember the date. April 8th, came aboard the boat.

Q. Where was the ship fitting out? A. Shreveport, Ohio.

Q. Did you commence navigation immediately after that? A. Two days after that.

Q. Was your full crew aboard when you came there? A. Yes, sir.

Q. Do you remember, captain, a seaman by the name of Ralph Zmrazek? A. Yes, sir.

Q. And did you have any—strike that. Did he have occasion to come to your room, and what led up to it? A. One day I was out on the forecastle deck and I was talking to him. I had put some tonic on my hair and I was rubbing it in. I couldn't handle it very well, it was dripping on my collar, and he said, "Do you want me to do it now?" and I said "No, but sometime when I do it again, you can do it." He said, "When you want me to do it I will come in your room and do it." "The next time when I have occasion to rub it in I will ask you to do it." And the next time, probably a week later, I asked him, "Are you willing to come up and rub tonic in my hair?" He said, "Yes." And he came in the room any time that I asked him, maybe once a week on the average, probably in all told five or six times.

Q. And how long would he be in the room on thes occasions, captain? A. Five minutes on the average, an not longer than ten minutes.

Q. And during any of these visits that he made to your room to rub in this hair tonic, did you have any conversation with him or did he have any conversation with you about the union? A. Well, he brought the subject up himself to me.

Q. When was that? A. About the second or third time he was up in my room, maybe the second time, I don't just recall.

Q. What did he say to you and what did you say to him? A. He said to me, "They asked me to sign up to join the union," he said, "What do you think about it?" "Well," I said, "I don't know very much about any unions but men are going on strikes according to what you read in the newspapers that I don't care for the union, but if unions were run right we might get some place, but the way they are run now, I don't just approve of it, the way they are going about it, and it is anyone's privilege to join any union, we can't put a ball and chain on them."

Q. Was that all that was said about unions in any of these visits? A. Yes, sir.

Q. Now, captain, at any time did you tell or advise this boy not to join a union? A. No, sir.

Q. What is the fact as to whether or not you ever said to this man that the union were a bunch of communists and no good drunks? A. I never made that remark, never mentioned that at all because I don't know a thing about

unions and I wouldn't mention a thing like that if I didn't know what I was talking about, and I didn't mention it.

Q. Now, did you ever advise this boy that he should not vote for the union? A. No, sir, I told him one time that it is anyone's privilege to do as they pleased. I didn't have authority to stop them, couldn't put a ball and chain on no one.

Q. Did you ever call individual members up in your room and talk to them about unions? A. No, sir.

Q. Did you ever ask this boy, this Ralph Zmrazek, ask him who the organizers were on the ship? A. No, sir.

Q. Did you know who the organizers were? A. Yes, sir.

Q. Who was the organizer? A. Arno Weissflog.

Q. And— A. John Galasky.

Q. When did you first find out Weissflog was an organizer? A. After he was aboard the boat, probably two weeks afterwards.

Q. Did you ever tell this Ralph Zmrazek to keep away from Weissflog, that he was cuckoo? A. No, sir.

Q. Now, coming to Weissflog, you have testified that you found out that he was an organizer a week or two after the vessel started to sail. Did you have any conversations with Weissflog pertaining to any of his activities? A. Yes, sir, I did.

Q. Will you tell us about when it was? A. Well, I just don't recall right what time but it was in the neighborhood of two to three weeks, two weeks after we started out, I met him on deck one day and I says to him, "I know what you are are here for," but I said, "I will warn you and also give you an opportunity that while you are on watch and any of the other men are on watch, don't talk to them. When you are off watch and the other men are off watch, you can do as you please."

Q. By that you were referring to union activities? A. Yes, sir, that is correct.

Q. Now, did you at any time ever say to this Weissflog that he was a communist and that he was corrupting the morals of the young seamen on the lakes? A. No, sir, I did not.

Q. Did you ever say, in speaking to him, that you were going to stop him from organizing members into the National Maritime Union? A. No, sir.

Q. Did you have any other contacts with Weissflog following this conversation when you told him that he could organize off watch but not on watch? A. The only time I had any connections with him was if the boat was held up for a length of time, five minutes or probably more, we had to wait for them and lay around.

Q. Just a minute. Where was the ship when you had to wait for him? A. Conneaut, Ohio.

Q. Had the vessel finished fueling? A. Yes, sir.

Q. And the vessel was waiting for these men? A. The vessel was waiting for these men.

Q. Where were you at the time? A. In the pilot house waiting for the men to come back.

Q. At Conneaut they come through a gate and down a short hill, take a ferry boat across the slip, and your ship was on the opposite side of this slip, was it? A. Yes, on the right hand side.

Q. And is it possible to see from the ship when the men come through the gate and start down to the launch? A. You can see them after they get off from the launch.

Q. And it was your custom as soon as the men got aboard to blow the whistle? A. If the mate gave me the all right signal.

Q. Was Weissflog one of the men who came aboard? A. Yes, sir.

Q. Did you have any conversation with Weissflog at that time? A. Not just at the moment, it was later on. I said, "We had to wait for you, you held up the boat. You should be back an hour or at least a half hour before the boat is ready to leave port." And he told me, "Well, we don't do it on salt water." "I don't know what you do on salt water, but we are in the habit of whatever mate is on watch, that issues the ship's pass, he notifies the man when to be back, that is an hour before the boat is ready to leave port."

Q. Did Weissflog tell you how they did it on salt water? A. He said they don't do it like that on salt water.

Q. Did he tell you how they did it? A. No, he said they don't do it like that on salt water.

Q. Did you say anything more to him? A. I said we have been doing it that way and that is the way we intend to do it, notify the man when we give him the pass what time to be back.

Q. Captain, Weissflog has testified as to a conversation that he had with you in the mess room or galley at one time, is that a fact? A. Yes, sir.

Q. Will you tell us about that incident? A. I come in to eat my dinner at 12 o'clock noon, probably a short time after, that is when they start to serve meals, any time between a quarter of twelve and 12:15, and as I came in, this waitress brought in food to one other man, I don't know who he was—

Trial Examiner Leff: Where was this, aboard the ship?

The Witness: Yes, sir.

Trial Examiner Leff: Do they have waitresses aboard ship?

The Witness: Yes, sir.

Mr. Hinslea: On different ships, some have women.

The Witness: She said to me, "I wish this Weissflog would get out of the galley and stop talking and leave us get our work done." I said, "Is he out there now?" She said yes.

Q. (By Mr. Hinslea): What did you do? A. I went out to the galley and he was standing in between the galley door and the mess room door, which was wholly interfering with the work.

Q. What did you say to him, if anything? A. I asked him if he wouldn't get out of there so the people could get their work done.

Q. Anything else? A. I said, "You are interfering with these people's work and you try to tell them they should work only eight hours a day, and you are interfering with their work. Now, your place is out on deck and you are on duty."

Q. What watch was he on at that time? A. On second mate's watch from ten o'clock in the morning to two o'clock in the afternoon.

Q. This was around twelve. A. This was after twelve o'clock.

Q. He was on watch at that time? A. Yes, sir.

Q. Now, did you take hold of him at that time and force him out of the galley, or did he get out of his own accord? A. No, sir, he went after I spoke to him.

Q. Did he say anything back to you? A. I don't remember him talking back to me, just went about his own business.

Q. Now, when was that, would you say, captain, I don't want the exact date, but have you any recollection whether it was April, June or July? A. April.

Q. It was April? A. Yes.

Q. Mr. Weissflog has testified as to a contact that he had with you in a fireman's room. Did you have occasion to contact Weissflog in a fireman's room at any time while he was on the ship? A. Yes, sir.

Q. Will you tell us about that? A. Well, it was sometime after one o'clock p. m.

Q. Can you tell us when that was, what month it was? A. Well, it would be the latter part of June.

Q. That was after the election? A. After the election, yes.

Q. Just what happened? A. I was up in my room and something came to me that I had to go back and see the chief engineer on the aft end of the ship, and as I was going towards the aft end of the ship I passed the firemen's quarters which was in the deck house.

Q. You mean the deck house is right on the deck as you walk by it? A. And you just go by close.

Q. Located between the hatch— A. Yes.

Q. What part of the ship? A. Midship, closer to the after cabin.

Q. What side of the ship did you walk down on? A. On the starboard side.

Q. And then tell us what happened? A. As I was on the way back there I just happened to hear conversation, the door was open and I looked in and this Weissflog was sitting in a chair and I walked in and asked him what he was doing and I said, "Your place is out on deck, you are on duty."

Q. Was he on watch at that time? A. Yes, sir.

Q. What else happened, if anything. A. He didn't make no effort to move. I said, "I do not want to be talking to you all the time, I have warned you many times, given you plenty of leeway." He made no effort to move, so I grabbed him by the arm and pulled him up from the chair and he stood there and I laid my hand on his shoulder and pushed him toward the door.

Q. Then did he go out? A. Yes, sir.

Q. Was there any other conversation? A. No, sir.

Q. Did he at that time say to you that he was going to quit, that he was afraid to stay on the ship? A. No, sir.

Q. No conversation of that kind? A. No.

Q. He did leave the ship later? A. Yes, sir, he did.

Q. Did you see him when he left the ship? A. After he was paid off I happened to be going down on deck some place and seen him with a suit case or some kind of luggage.

Q. And you had no more conversation with him? A. No, sir.

Q. Now, at that time, I am referring now to the episode in the firemen's room, or any other time while he was on the ship, did you ever call him a no good bastard? A. No, sir.

Q. Captain, did you ever arrange for the distribution of a pamphlet that is known as "Jim Crow" pamphlet? A. No, sir.

Q. Did you ever give those out to any wheelsman or watchman to distribute among the crew? A. No, sir.

Q. That is all.

CROSS EXAMINATION.

Q. (By Mr. Belkin): Captain, you said it was at your invitation that Ralph Zmrazek came to your cabin to put that tonic on your hair? A. I didn't invite him, he volunteered the first time after I was finished.

Q. You explained your trouble, it dripped on your collar. A. Yes.

Q. After that you called him— A. He asked, he volunteered, he said he would be up.

Q. And during the course of applying the tonic, you two would get into a conversation? A. Yes, sir.

Q. How old is this boy, to your knowledge? A. Sixteen or seventeen.

Q. How old are you, if I may ask? A. Fifty-three.

Q. Do you have any boys of your own? A. No, sir.

Q. Did you say that in your conversation with him he initiated the topic of the union, asked you if he should join it. Is that your testimony? A. He asked me what I thought about it.

Q. Did he ask you about other matters? A. About different matters not pertaining to the union, different things about the ship.

Q. Who brought them up? A. Both.

Q. You sort of took a fatherly interest in the boy and gave him your opinion on matters he brought up? A. He talked about working in the market house in Cleveland, he had worked in the meat department, I also had worked in the meat department, that interested me, we talked about that. And his family lived on a farm, and I worked around the farm and that kind of interested me.

Q. In the course of your conversation with him and your telling him about the union's advantages and disadvantages as you saw them, did you at any time discuss the possibility of the union winning the election and if it did win what, if any, contact would result? A. Well, I said, "I don't know if the union will win, but if they do win, probably that if you are with me this year and if I was transferred to another boat that you wouldn't be able to go with me, but if I came back on the same boat, I would be back there probably again."

Q. In other words, you were discussing the rotary shipping list? A. Different boys on board, one boy talked about it, that is all I knew, I heard some boys talking amongst themselves.

Q. In other words, you did not talk about it, just picked it up by eavesdropping.

Mr. Hinslea: I object to that.

Trial Examiner Leff: How did you hear about it?

The Witness: I didn't bring it up myself.

Trial Examiner Leff: How did you hear about it?

The Witness: I heard one boy talking to another as I was passing them.

Q. (By Mr. Belkin): What did those boys say? A. Now he said that if I get a promotion I couldn't go back with them.

Q. And you passed that along as your opinion? A. Yes.

Q. Did you make any investigation of this information that you overheard? A. No.

Q. Was that the type of information you generally passed about, along to this boy? A. That is the only information I told this boy, I said that is all I know about it.

Trial Examiner Leff: What did you know about it, just what you overheard?

The Witness: Just that little conversation I overheard.

Trial Examiner Leff: Is that the only time you overheard about this rotary system?

The Witness: Yes, sir.

Trial Examiner Leff: What is the rotary system?

The Witness: I don't know a great deal about it, the only thing I know in one sense of the word, I understood it the men were saying the men weren't supposed to stay with the captain if he was promoted to another ship.

Q. (By Mr. Belkin): And you didn't make inquiries about that matter? A. No, sir.

Q. I was asking you whether or not in your conversation with Zmrazek you gave him other information of that nature, information you acquired by overhearing other people. A. No, sir, just this one conversation.

Q. Isn't it true, captain, that you discussed the situation as you saw it, that even if the union won the election it might take two or three years before they might get a contract with the company? A. No, sir.

Q. Now, captain, do you recall the election which was held by the National Labor Relations Board on board your vessel sometime in June? A. Yes, sir.

Q. Before that election, did you discuss the election with any members of your crew? A. No, sir.

Q. With not a single person aboard the ship? A. No, the only conversation I had with—

Q. Just with Zmrazek? A. Yes, sir.

Q. Isn't it true that on board your ship there were two letters from the president of the company, captain? A. They didn't come to me, they came to—wherever they went I didn't see them.

Q. They didn't come to you? A. No, sir.

Q. To whom did they go, do you know? A. I don't think any came aboard, I don't know who they would be addressed to.

Q. Did you ever see those letters aboard your ship? A. No, sir.

Q. During the period before the election on June 6th the two letters over Mr. Ferbert's name which appeared

aboard your vessel were not seen by you? A. If any came aboard, I didn't see them.

Q. Have you at any time seen those letters? A. No, sir.

Q. You want us to believe that these letters which were printed over the signature of Mr. Ferbert, president of the Pittsburgh Steamship Company never came to your attention at any time? A. If they weren't addressed to me, that wouldn't be none of my business.

Q. You had a bulletin board on your ship, didn't you? A. We had several of them.

Q. Where are these bulletin boards? A. One is in the forward hall, it might have been in the mess room, bulletin boards were in the mess room, also in what we call the fantail down in the engine room.

Q. Did you ever put any material up on that board? A. Only what is addressed to me, what I read myself.

Q. Did you make it your business to examine the bulletin board from time to time to see what material was on it? A. Occasionally I do.

Q. As a matter of fact, you see it every day as you go through the mess room? A. I don't look at it every day. I don't go in the mess room every day.

Q. What about the bulletin board in the forward hall, did you see that every day? A. That is in the hallway, I don't go in the hallway every day.

Q. So there were times when you did not see either? A. That is correct.

Q. Was there a period of three or four weeks when you did not see either? A. I wouldn't say that long ago in all the different compartments of the boat, maybe twice a week, once a week.

Q. So that in a period of not less than two weeks—withdraw that. So that there never was a period of more than two weeks in which you don't see what was on the bulletin boards? A. Well, I probably go through and don't look at the bulletin board just on that occasion.

Q. Now, if the letters from the president of your company had been on board your ship and posted on the bulletin board for three or four weeks, you would have seen them? A. If I had looked after it was posted there.

Q. Just before you testified this morning there was a Phillip Ambrozicy who testified he was a licensed engineer

aboard your ship and he testified that he saw certain bulletins aboard the ship. Would you deny that— A. I don't know what bulletins he was reading, we got a lot of bulletins there.

Q. The company sends them to you? A. We get safety bulletins, pertaining to safety, we get Lake Carriers Association bulletins.

Q. Who puts these bulletins up? A. If they are addressed to me I will hand it to the mate and tell him to post them on the bulletin board.

Q. So it is your testimony that at no time did you see any letters from Mr. Ferbert posted on the bulletin board? A. No, sir.

Q. Are you familiar with the speech of Congressman Bradley that is published in pamphlet form? Have you ever seen that? A. No, sir.

Q. Isn't it true that that pamphlet appeared aboard your ship in the period prior to June 6, 1944?

Mr. Hinslea: Now, Mr. Examiner, is this proper cross examination?

Trial Examiner Leff: He said he wasn't familiar with the speech. Did you ever see a pamphlet aboard your ship which was a copy of a speech made by Congressman Bradley?

The Witness: Not that I know of. I don't remember.

Q. (By Mr. Belkin): Did you ever see the pamphlet "N.M.U. Fights Jim Crow"? A. I seen one or two.

Q. Aboard your vessel? A. Yes, sir.

Q. Did you bring them aboard your ship? A. No, sir.

Q. Do you know how they got them aboard your vessel? A. They come by mail.

Q. From whom? A. I don't know.

Q. Was a copy addressed to you? A. No, sir.

Q. Did you at any time see a copy of the Pilot, a union publication, aboard your vessel? A. Yes, I seen them on the vessel.

Q. As a matter of fact, did Weissflog make it a point to give you a copy of the Pilot from time to time? A. No, sir.

Q. But you saw the Pilot aboard the ship, didn't you? A. Yes, sir.

Q. Did you ever read the Pilot? A. No, sir.

Q. You mean you saw that publication around there and never picked it up and read it? A. No, sir.

Q. As a matter of fact, isn't it true that you not only read the Pilot but you read matters in the Pilot discussing the rotary shipping contract and the rotary shipping list? A. No, sir.

Q. You testified on direct examination by Mr. Hinslea, captain, that you knew Weissflog was an organizer, that after two weeks on board the ship you found out about it. How did you find out Weissflog was an organizer? A. Well, in a small space as a boat, thirty-six men, you pick up a drop here, a drop there, and his name was mentioned, I don't know by who it was, probably one of the cooks, I don't remember that, I have other things more responsible than going around listening to a lot of gossip. It might have been in the kitchen.

Q. Isn't it a very important part of your duties to handle the personnel part of your men? A. Yes, sir.

Q. Wouldn't union representation of your men be an important personnel problem? A. I don't know anything about the union.

Q. I didn't ask you that. Isn't that an important problem in connection with personnel, whether or not your men belong to the union? A. I don't know if it would be important to me if they belong to the union or not.

Q. You would have to deal with the union if they were represented by one. A. If they organized, I suppose I would.

Q. So that as captain of the ship, dealing with these men, it was important to you if they joined a union or not. A. It was their own free will.

Q. I understand that, but it was an important issue to you and therefore you were bound and determined to find out, weren't you, whether they were being organized or not. A. No, sir, I wasn't. I warned this Arno Weissflog, I told him I knew what he was doing here, but that he was getting paid for doing the ship's work, and to leave the other men that was getting paid to do the ship's work alone while both of them were on watch, no matter what watch.

Q. I am trying to find out one matter. You testified you found out Weissflog was an organizer, and you also testified that handling personnel problems was important,

and you also testified that you found out from someone that Weissflog was an organizer. Now, in the light of all this testimony of yours, the source of your information concerning Weissflog is very important and I would like you to tell me just how you found out and from what person.

Mr. Hinslea: I submit he has already answered that to the best of his ability.

Trial Examiner Leff: I agree. I will sustain the objection.

Q. (By Mr. Belkin): In your conversation with Mr. Weissflog on board the vessel two weeks after you had started out and just after you had found out he was an organizer, you said to him, from your testimony as I got it, I know what you are here for, don't talk to the men on watch? A. That is correct. What I meant by that was don't interfere with the men on watch because we have work to do and you don't get your work done.

Q. By that you meant he was not to talk to them on any subject?

Mr. Hinslea: No, no, he didn't testify that.

Mr. Belkin: I didn't ask him what he testified, I asked him what he meant.

Trial Examiner Leff: There isn't any objection to this question.

The Witness: That is correct.

Trial Examiner Leff: Do you have any rule aboard your ship which prohibits employes from talking to each other while at work?

A. No, not as a rule, as long as they are doing their work.

Trial Examiner Leff: May one employe talk to another about other things providing both are doing their work?

The Witness: I do not hear them all the time, maybe they are talking about the law and things.

Trial Examiner Leff: Do you make it your practice to find out what they are talking about as a rule?

The Witness: If they are talking and laying idle, that is the time I talk to them. I don't know how many there were, they were all laying idle, I don't just recall what they were doing, it was some kind of work on deck, I don't recall what it was, something to the hatch, painting, something

like that. They were down there working and as I was coming down the deck they were all standing there.

Trial Examiner Leff: Do you know what they were talking about?

The Witness: No.

Q. (By Mr. Belkin): Now, directing your attention to the time when you talked to Weissflog about holding the boat up, you recall that, don't you, captain? A. You mean at Conneaut?

Q. Yes, sir. A. Yes, sir.

Q. As I understand your testimony, there were five or more men who came late with Weissflog, and thereafter you talked to Weissflog about it, is that right? A. That is correct.

Q. Did you talk to any of the other men? A. I think I did.

Q. To whom? A. I don't remember their names, it is hard to remember everybody's name on the boat.

Q. I understand there were nine men involved. A. I don't remember how many.

Q. That could be true? A. That could be true. It was five as I remember, some of them probably were engineers.

Q. How many of these nine men did you talk to?

Mr. Hinslea: Mr. Examiner, he did not testify there were nine men.

Q. (By Mr. Belkin): Well, how many of these men did you talk to about coming late? A. I asked them if they didn't have orders from the mate what time they should be back.

Q. You didn't answer the question. A. I don't remember what their names were, sometimes you ship a couple of men on a trip, it is a hard matter to remember everybody's name.

Q. Why did you remember Weissflog's name and not the others? A. He was there longest, we were shipping many men, I don't know their individual names at that particular time.

Q. You mean that of this crew of men Weissflog was the longest in service with you? A. Because when I asked him that was why I happened to remember his name.

Q. What was that you said? A. When I asked him in the pilot if he didn't know that it was time to be back aboard the boat.

Q. What was the pilot?

Mr. Hinslea: In the pilot house.

Q. (By Mr. Belkin): You are speaking of a union publication?

Trial Examiner Leff: You said that was in the pilot, what were you referring to?

The Witness: About asking Weissflog if he didn't know what time to come back to the boat.

Trial Examiner Leff: You said in the pilot, what did you mean by the pilot?

The Witness: In the pilot house of the steamboat.

Q. (By Mr. Belkin): I see, it was in the pilot house of the steamboat, of your ship, that you talked to Weissflog? A. Yes.

Q. And I take it, it was in the pilot house that you talked to the other men? A. No, probably on deck or after supper sometime.

Q. But you called Weissflog to the pilot house? A. No, as far as I remember, he came up there.

Q. He volunteered to talk to you about being late? A. Yes, sir.

Q. He came up voluntarily and said, "Captain, I want to talk to you about coming late."? A. I don't remember if he said those words. That is why I had the opportunity to ask him why he wasn't back.

Q. Was he there because of taking an assignment? A. Where, in the pilot house?

Q. Yes. A. Well, that I couldn't answer. If he came up there, when he came up there, when he came up the ladder, I don't know what mate was on. Maybe the mate told him to go and explain why he was late to me.

Q. Did you discuss this matter with the mate? A. No, sir.

Q. Now, I want to go back to this statement of yours, that you talked to the other men. Now, I ask you again, how many men did you talk to besides Weissflog? A. Maybe two or three, I don't just recall.

Q. Do you remember the names? A. No, because that happens a good many times in a season on the boat,

you go to the men and ask them why they weren't back, you don't remember their names.

Q. Did you check to find out if the mate had issued passes to these men? A. The mate would have to give them the passes, the only way for the men to get a pass, or the man at the gate which they have there, for guard there. he would send them back on the boat.

Q. Did you check those passes to see what the time of return was on them? A. No, sir.

Q. As a matter of fact, you don't know if any time was stated on the pass? A. No, but that is the orders in the spring of the year.

Q. Did you ask the mate whether he put the time on the passes for return?

Mr. Hinslea: Mr. Examiner, it is getting awfully late and I have been patient about this cross examination. Does the counsel for the board charge that this has to do with unfair labor practice?

Mr. Belkin: It has to do with the credibility of this witness.

Mr. Hinslea: I am asking if this type of cross examination has to do with an unfair labor practice charge, that is, speaking to a man for coming back late.

Mr. Belkin: This witness has testified that he said to Weissflog that there are certain rules he had to obey, he couldn't leave the ship and return unless he had a pass, and he was to obey the pass and the terms of it, as a matter of fact I think we have testimony in the record that no return time was issued on these passes, and if the captain had asked this mate or had checked before he talked to Weissflog I think the situation might have been somewhat different, but coupled with the fact that he had talked to Weissflog and had talked to others, I think his testimony—

Trial Examiner Leff: I will allow it. Please proceed. Will you please answer the previous question?

The Witness: No, that is standing orders in the spring of the year.

Q. (By Mr. Belkin): In other words you reprimanded Weissflog without finding out whether any return time was on the pass? Will you answer that yes or no. A. I didn't get the question.

Q. In other words, you reprimanded Weissflog without finding out whether any return time was on the pass? A. Let me explain.

Trial Examiner Leff: Can you answer that question, Mr. Witness?

The Witness: I will when you let me explain mine.

Trial Examiner Leff: First answer the question.

The Witness: Well, the mate would have told him what time to come back, that is why I wanted to explain to him first, then I could answer.

Trial Examiner Leff: Let me ask you this question. Did you at the time you reprimanded Mr. Weissflog know what time he was required to return according to the pass?

The Witness: If he received a pass, from whatever mate issued the pass, he was told what time to be back.

Trial Examiner Leff: I am afraid I cannot accept that as an answer to the question. My question was, did you have knowledge at that time as to what the pass said with reference to the time that Weissflog was required to return?

The Witness: I think I answered your question.

Trial Examiner Leff: Did you know what was on the pass?

The Witness: No, I don't see the passes when they are issued out.

Trial Examiner Leff: And you didn't see the pass at that time?

The Witness: These passes are collected at the gate, how would I see it?

Trial Examiner Leff: Were you told by anybody?

The Witness: No, but I know how passes were made out. I don't know what was on the pass except what I know was supposed to be on there.

Q. (By Mr. Belkin) Now, captain, you testified that one day as you were coming through the mess room, one of the waitresses said that Weissflog had been talking to her. A. I was notified he was there.

Q. Who notified you? A. The waitress, while I was eating dinner.

Q. She said Weissflog was in the galley? A. Yes, and interfering with the work.

Q. Did she tell you what Weissflog was talking about? A. No, sir.

Q. Did you ask her? A. No, sir.

Q. So you went out and told Weissflog to get out of the galley without finding out what the subject of the talk was. A. That is right. After everybody gets through eating they are supposed to get out of the mess room or dining room. That is no place to be hanging around.

Q. What time did the men who are on the 10 a.m. to 2 p.m. watch eat? A. Any time from twenty minutes to 12, to 12:15.

Q. In other words, Weissflog had a right to be in the mess room eating at 12 noon. A. He had a right to be in but he was finished eating.

Q. How did you know? A. I was told.

Q. Is it required by you that the minute the men finish eating that they get out of the mess room? A. That has been the rules for as long as I have been on the boat.

Q. Did you enforce the rule? A. No, I never enforced the rule.

Q. Never before? A. Well, if I see they were loitering and hindering work, I told them to get out.

Trial Examiner Leff: Do you have a rule preventing employes from talking to waitresses in the mess room?

The Witness: They get started on a conversation of some kind, but that has been the customary rule as far as I know, no talking around at meal time in the mess room or dining room.

Trial Examiner Leff: They are not allowed to talk?

The Witness: There is no strict rule of that that I know of.

Trial Examiner Leff: Do they talk as a matter of custom?

The Witness: Once in a while they might say something about the weather, something like that, but they don't sit and hold a lengthy conversation.

Trial Examiner Leff: Is it unusual for them to talk in the mess room?

The Witness: I don't know, I don't eat in the mess room.

Trial Examiner Leff: Have you ever heard any conversation while you walk through there?

The Witness: They might be saying, "pass the meat," "pass the bread," I didn't pay attention, just walk through there.

Trial Examiner Leff: I assume they talked to each other but have you ever heard anybody talking to a waitress in the mess room?

The Witness: I don't know if they talk to her or not, I am not in eating with these men.

Q. (By Mr. Belkin): Where do you eat? A. In the dining room.

Q. There is a door leading from the dining room to the mess room; in other words, you go from the mess room—withdraw that. I shall ask the witness this. There is a door between your dining room and the mess room, is there not? A. There are several doors you go through, from the dining room you get to the galley and from the galley you go to the mess room.

Q. Is there any door which leads directly from the mess room to the dining room in which you eat? A. Not directly.

Q. Is it possible for you while you are eating in your dining room to hear conversation from the mess room from any of the doors? A. No.

Q. Captain, did you at any time during your voyages in 1944 have occasion to reprimand any other sailor than Weissflog for talking in the mess room?

Mr. Hinslea: At what time?

Trial Examiner Leff: At any time.

Mr. Belkin: At any time. What I said was at any time during his voyages in 1944.

Mr. Hinslea: At what time were the men talking?

Trial Examiner Leff: The question is plain, the witness can answer. Did you ever reprimand anybody other than Weissflog for talking in the mess room?

The Witness: I did not have occasion. He was finished eating.

Trial Examiner Leff: Then you never did, is that the answer?

The Witness: Only to Mr. Weissflog. I didn't have occasion, my attention was not called to it.

Q. (By Mr. Belkin): As a matter of fact, you knew that when Mr. Weissflog was talking at any length to the other help, the chances are he would be talking about the union?

Mr. Hinslea: I object.

Trial Examiner Leff: Overruled.

Mr. Hinslea: That is a conclusion.

Trial Examiner Leff: Statement of a witness—

Q. (By Mr. Belkin): You knew he was a union organizer since the second week he was on your ship? A. That is correct.

Q. You knew he was talking to the personnel encouraging them to join the union? A. I presume that was his duty, that was why he was talking to them.

Q. Didn't you also presume that if he was talking to the girls in the galley, that he was talking in behalf of the union? A. I imagine so or she wouldn't have called my attention to it.

Trial Examiner Leff: Exactly what did the girl tell you?

The Witness: I think I answered that question.

Trial Examiner Leff: Answer it again. What did the waitress tell you?

The Witness: Do I have to answer it?

Trial Examiner Leff: Yes, you do. Now, answer it.

The Witness: I don't know.

Trial Examiner Leff: Will you please answer?

Mr. Hinslea: Answer to the best of your ability.

The Witness: Well, as I was in eating, this waitress came in with food for another man and she said to me, "I wish this Weissflog would get out of the galley and stop talking about the union, he is interfering with our work."

Q. (By Mr. Belkin): Now, captain, you are still on the Morse, aren't you? A. No, sir.

Q. You are on a different ship? A. Yes, sir.

Q. What is the name of the ship you are now on? A. John W. Gates.

Q. How many of the Morse personnel did you take with you, to the best of your recollection? A. One.

Q. And do you know whether the remainder of the personnel of the Morse in 1944 are still with the Morse now?

Mr. Hinslea: I object to this line of questioning.

Trial Examiner Leff: Overruled.

The Witness: That I couldn't tell you.

Q. (By Mr. Belkin): To your knowledge, the majority are still with the Pittsburgh Steamship fleet, are they not? A. Lots of times they shift to other steamboats.

Q. Tell me, captain, when these men come back after a previous season, do they uniformly return to the same ship in the fleet or might they scatter to other ships? A. Well, some might go with the first mate, some with the second mate, some with the third mate, and some go back with the captain.

Q. Generally follow the man they like best? A. That is what I did.

Trial Examiner Leff: Let's carry that one step further. Is it unusual for the mates and other licensed men to change ships during different seasons?

The Witness: What do you mean?

Trial Examiner Leff: To work on one steamship of the Pittsburgh Steamship line one season, then another the following season?

The Witness: Well, as the occasions may be. Maybe a licensed man or mate quits, he might be sick, or they might ship him to another port, I don't know what they do, change him in the middle of winter, change him from one port to another as a promotion, I don't know.

Q. (By Mr. Belkin): This man you took with you from the Morse to your present ship, was he a licensed or unlicensed man? A. Unlicensed man.

Q. Captain, are you in any way familiar with the history of the N.M.U.? A. No, sir.

Q. Are you familiar with what its program or provisions are? A. No, sir.

Q. Are you familiar with the men who are the leaders of the National Maritime Union? A. No, sir.

Q. In other words, as far as the National Maritime Union is concerned, you know nothing of that organization? A. No, sir.

Q. You have been sailing the Great Lakes continuously as captain since 1932 or 1930? A. No, sir.

Q. I thought from your testimony— A. 1940.

Q. 1940 as captain. And before that you sailed as a licensed officer? A. Yes, sir.

Q. Was there any season you were not on the Great Lakes in the last fifteen years? A. No, it has been continuous for the last fifteen years.

Q. Yes.

CROSS EXAMINATION.

Q. (By Mr. Rosenfeld): You came on board the Morse in 1944, did you know that a Labor Board election was going to take place? A. No.

Q. When did you first learn that a Labor Board election was going to take place in 1944? A. Sometime after we got on the run after we left our fitout port.

Q. How did you learn about it? A. Oh, I might have picked it up from the engineer, the cook, or deckhand. We are in close quarters there, thirty-six men.

Q. Did you receive any information from the Pittsburgh Steamship Company to the effect that an election was going to be conducted on board your ship? A. Not to my knowledge.

Trial Examiner Leff: You did at some time?

The Witness: I don't remember.

Trial Examiner Leff: You never received any notice that an election would be held on your ship at any time?

The Witness: I seen notices posted on the bulletin boards that elections would be held on Pittsburgh boats.

Trial Examiner Leff: Is that the only way? Did Mr. Zyp tell you about it?

The Witness: I don't know if Mr. Zyp told me about it.

Trial Examiner Leff: Did any official of the Pittsburgh Line ever tell you that an election was to be held?

The Witness: No, sir.

Q. (By Mr. Rosenfeld): Did you receive any notices and instructions to post notices before the election took place? A. Nothing addressed to me.

Q. Captain, when general material is sent to the ship by the company, to whom is it sent? A. What is that?

Q. When material is sent to the ship to be posted on the bulletin board, to whom is it sent? A. There might be some literature come aboard.

Q. I am not talking about literature. If the company wants a notice posted on board the ship, to whom do they send that information? A. Important mail is addressed to the captain of the boat.

Q. All important mail? A. That is correct.

Q. And you are charged with the responsibility of seeing that this material is posted on the various bulletin

boards? A. Well, if there is anything to be posted, I give it to whatever mate happens to be on duty at that time.

Q. But you are the man who gives the instructions, is that right? A. Yes, sir.

Q. You are in general charge of it? A. That vessel only, yes, sir.

Q. It is your responsibility to see that these instructions are carried out? A. Yes, sir.

Q. And when you give such instructions to your mate, do you see that he carries this instruction out? A. If it is a very important instruction I do. Something like that maybe could go for a week and it wouldn't be very important.

Q. Do you regard letters signed by the president of the Pittsburgh Steamship Company important or unimportant? A. A lot of important material comes to me.

Q. I asked you do you regard a letter signed by the president of the company important or unimportant? A. I don't know what you mean right there.

Q. You said some instructions are important and some not important. A. That is correct. There is lots of letters that come to me there that is confidential.

Q. Do you regard letters signed by the president of the company as important or not important? A. Lot of letters that are important. I don't know if any comes that are unimportant. If they are unimportant I don't think they would do that.

Q. When you learned for the first time that an election was going to be held, did you also learn that the National Maritime Board was going to be on the ballot? A. I didn't just understand.

Q. You learned eventually by hearing people talk about it in various ways that a Labor Board election was going to be held on board your ship. A. That is right.

Q. When did you learn that the National Maritime Union was going to be on the ballot which was used in that election? A. When did I learn it?

Q. Yes. A. I don't remember.

Q. How did you learn that? A. With conversations, I even was approached on shore.

Q. By whom? A. By different people I come in contact, I know people different places I came in. They say, "I hear that an election is going to be held on the boat."

Q. That is how you learned about it? A. That is right.

Q. Did you obtain any information about the National Maritime Union? A. No, sir.

Q. Are you not interested in the kind of a union that was asking for an election on board your ship? A. If I was interested in it?

Q. What kind of a union it was. A. It didn't make any difference what kind of union it was.

Q. It didn't make any difference what kind of a union it was? A. Not to me.

Q. You made no inquiry of any kind?

Mr. Hinslea: Mr. Examiner, it seems to me that Mr. Belkin went through this. Now it is repetition on the part of Mr. Rosenfeld.

Trial Examiner Leff: I am inclined to agree with Mr. Hinslea. You have the right to cross examine, but I think you will be the first to recognize there is no point in duplication.

Mr. Rosenfeld: I do want to find out something about what Mr. Belkin didn't go into. I would like to find out what the captain knows about the union.

Q. (By Mr. Rosenfeld): What did you learn about the union—about the National Maritime Union? A. What did I learn about it.

Q. Yes. A. The only thing I knew they were going to hold an election. That was broadcast all over, that they read on the posters.

Q. The only thing that was said about the union was that it was going to hold an election, nothing more? A. That is all that I know of.

Q. I am coming back to the time when you saw Weissflog in the firemen's room. At what time of the day was that? A. Shortly after one o'clock p.m.

Q. His was the ten to two watch? A. That is right.

Q. Did you see Weissflog go into the room? A. No, sir.

Q. Do you know how long he was in the room? A. I don't know.

Q. Did you ask him why he was in the room? A. I asked him what he was doing there. I said you have no business in there.

Q. Did you wait for him to answer your question? A. Yes.

Q. What was his answer? A. Something about a cap or hat he left in there.

Q. So he told you he left a cap or hat in there? A. Something pertaining to a cap or hat.

Q. And none the less you put your hands on him and forced him out of the room? A. Not right away. I asked him, I said, "All right, get out of here." He made no effort to get up from the chair. He made no effort to get out so I grabbed him by the arm and lift him up and he braced his feet and wouldn't get out and I just put my hand on his shoulder and I said, "There is the door, get out."

Mr. Rosenfeld: That is all.

RE-DIRECT EXAMINATION.

Q. (By Mr. Hinslea): Captain, Mr. Leff, the examiner, was asking you about talking in the mess room or dining room, did you understand that he was asking you about when the men were actually eating or after they were through eating that they were standing around in the mess room or galley? A. I understood they were done eating.

Q. Finished eating and then standing around. A. Yes.

Q. Weissflog was actually on watch when you put him out? A. That is correct.

Q. And the cooks have to feed how many men between twenty minutes to twelve and 12:15? A. Thirty-six, counting the four in the galley.

Q. Thirty-six. And how many people in the galley, how many on the Morse last year? A. You mean that worked in the galley?

Q. Yes. A. Four.

Q. Weissflog was standing part way in the galley and part way in the mess room? A. That is correct, blocking the way of the waitress and porters going back and forth serving meals or carrying out dishes that had been used.

Q. Now, at the time you went in the firemen's room, Weissflog was actually sitting in a chair in the firemen's room? A. That is right.

RE-CROSS EXAMINATION.

Q. (By Mr. Belkin): Directing your attention to this incident in the firemen's quarters, captain, what is the maritime rule on the captain physically handling an unlicensed member of his crew.

Mr. Hinslea: I object.

Mr. Belkin: I don't understand on what ground.

Mr. Hinslea: It has nothing to do with this case, it is entirely immaterial.

Trial Examiner Leff: Overruled.

Q. (By Mr. Belkin): Will you please answer, captain? A. Might be a lot of answers to it, but I think the captain has the right to have any man aboard the boat obey orders.

Q. What is the rule on handling him physically? A. Well, I don't know how you would explain that, but—

Q. I see. I will withdraw the question. A. If a man would get unruly, he would have authority as he doesn't want the crew to get unruly.

Q. I withdrew the question.

Trial Examiner Leff: I don't think it is important. Any further questions?

Q. (By Mr. Hinslea): Captain, you said Weissflog came up in the pilot house after leaving Conneaut. Isn't it a fact that he came up and asked you why he had been singled out by the mate? A. There was something to that effect and I don't just recall the whole instance. I explained to him that I took it for granted that the mate told him what time to be back and he went under the mate's orders.

Mr. Hinslea: That is all.

Trial Examiner Leff: Any further questions? Witness excused.

(Witness excused.)

Trial Examiner Leff: Off the record.

(Discussion off the record.)

Trial Examiner Leff: On the record. The hearing is adjourned to 12 o'clock noon today at the Agate Bay Hotel at Two Harbors, Minnesota.

(Whereupon at 3:45 a.m. the hearing was adjourned until 12 o'clock noon the same day.)

Agate Bay Hotel
Two Harbors, Minnesota
Wednesday, August 29, 1945

The above entitled matter came on for hearing, pursuant to adjournment, at 2:00 p.m.

(Appearances omitted.)

Trial Examiner Leff: The hearing is in order.

JOSEPH OTTO CHROBAK, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?

The Witness: Joseph Otto Chrobak.

DIRECT EXAMINATION.

Q. (By Mr. Ray): Where do you live? A. Lorain, Ohio.

Q. Street address? A. 1943 Hamilton Avenue.

Q. What is your occupation? A. Second mate, Pittsburgh Steamship Company.

Q. During the spring of 1944 were you or were you not employed by the Pittsburgh Steamship Company? A. I was employed.

Q. As what? A. Second mate.

Q. On what vessel? A. Irving S. Olds.

Q. How long have you sailed? A. I have been with the Pittsburgh Steamship Company since 1929 and previous to that I can't recall.

Q. How long have you had a license? A. I got my license in 1934.

Q. What licenses do you hold? A. Master's and first class pilot.

Q. Any limit to the tonnage? A. No limit.

Q. Mr. Chrobak, do you recall a seaman by the name of Howard Shartle who was on board the steamer Irving S. Olds? A. I do.

Q. What was his rating on the vessel? A. A.B.

Q. Can you tell me whether he was watchman or wheelsman or what? A. Watchman.

Q. Watchman. As second mate what was the time of your watch? A. From ten a.m. till 2 p.m. and from 10 p.m. till 2 a.m.

Q. Was Shartle on your watch? A. No, sir.

Q. Do you recall whose watch he was on? A. Third mate's watch.

Q. During the time that both you and Shartle were on the vessel, do you recall whether or not he was late returning to the vessel on any occasion? A. Yes, during the spring fit-out two or three times he was late from half an hour to an hour, I don't exactly recall.

Q. And did he report to you when he came aboard or not? A. No, he did not.

Q. Did you discuss the question of the reason for his lateness with him at any time? A. I did not.

Trial Examiner Leff: How do you know he was late?

The Witness: At that time I had charge of the paint gang that worked at that time and most of the men on the boat who were doing that job were there and he didn't show up. There was a partner missing on the stage plank and I couldn't help knowing he was late.

Q. (By Mr. Ray): What type of work were you supervising during the fit-out work? A. Painting the hull of the ship.

Q. And had you established two watches at the time that work was going on? A. No, sir.

Q. Will you describe generally how this painting work was done? A. Yes. We worked on stage planks, two men on a plank, and we would start the men off on a row at the top of the ship's hull and work down together to the water's edge and when that fleet was done we would move and start at the top and continue on.

Q. What were your duties in respect to that work? A. It was my job to see that everything was running smoothly; that they were supplied with paint, tools; to see that they were lowered and raised at the proper time.

Q. How close would you be to the work as the work was going on? A. Right above them at the gunnel.

Q. Will you explain what the gunnel is? A. The gunnel is the top of the ship's side where it meets the deck.

Q. Now, did Shartle do any of this painting work under your supervision as a member of this crew? A. Yes, he did.

Q. How many—in how long a period was this painting done? Over what period of time? A. You mean how long did it take?

Q. Yes. A. Roughly eight days. It was over a week.

Q. As I understand your testimony up to this point, there would be two men on each stage. A. That is correct.

Q. Then you would have several stages, then when they would finish one section of the ship they would move along? A. That is correct.

Q. Now, did you observe anything with respect to Mr. Shartle's work at that time, in the painting of the hull of the steamer? A. Could you explain the question a little better?

Mr. Rosenfeld: I don't think the question calls for an explanation. Any explanation is apt to be leading in character.

Trial Examiner Leff: Well, I think the counsel for the respondent might point out the respect in which the witness observed Shartle.

Q. (By Mr. Ray): Did you observe Mr. Shartle as he was doing his painting work on the hull of the vessel any period of time? A. Yes, I did.

Q. Will you kindly describe his work and whether his work differed in any respect from the work of the others? A. Yes. Shartle had a partner like the other fellows did, two men on a stage, and they were—each man on the stage was supposed to do half the painting, meet the other man half way. Shartle was lagging, his partner would do three-fourths of the work. That stage was behind the other three. Does that answer the question?

Q. You say his stage was behind the other three. Will you explain that? A Yes, he was always behind. The other three stages were ahead of Shartle and his partner. They were lagging.

Trial Examiner Leff: Who was Shartle's partner?

The Witness: I don't recall right now.

Q. (By Mr. Ray): Approximately how much sooner would the other staging crews be through with that particular type of work before Shartle and his partner? A. Fifteen to twenty minutes for that fleet. By that fleet I mean the distance from the gunnel to the water's edge.

Q. Now when you observed this activity on the part of Shartle, did you or did you not say anything to Shartle about his work? A. Yes, I did.

Q. What did you say? A. I called him for it, I wanted him to keep his end of the work up, talked to him on two occasions that I remember but he didn't say anything.

Q. Did you notice any improvement in his work after that? A. No, I did not. He did make a remark to the other fellows, he was razzing them for going so fast, he asked them what were they doing, piece work, but as far as saying anything to me, he didn't.

Q. Now, did you at that time or any subsequent time make any report of Shartle's failure to do his part of the work to any other officer on the ship? A. Yes, to the first mate.

Q. What, if any, action did the first mate take? A. I told him that Shartle was slow and he was trying to slow the other fellows up, and he ought to do something about it, and the mate said he would let it run a while and see how things panned out.

Q. Mr. Chrobak, do you recall coming in to Two Harbors a short time after you began navigating, an occasion where Shartle was handling the aft winch? A. Yes, about the second trip at Two Harbors.

Q. Do you recall what your vessel was doing at the time Mr. Shartle was handling the winches on that occasion? A. Yes, we were loading in at Two Harbors, I was doing the loading, we split the loading between the mate and myself, it so happened it was my turn.

Q. Just generally, will you explain how this loading operation takes place as far as the vessel is concerned? A. A man at each end handles these winches at which the cables are wound and through these cables we moved the ship along the dock to put her on the right spot for her spouts, while these men get the signals from the men doing the loading.

Q. What type of signals? A. We have a special set of signals—by raising the hand signifies 48 feet to go, 24 feet, 12 feet, and so forth.

Q. What is the function of the man at the winch upon receiving these signals? A. When he gets the 48 feet signal he is supposed to have a deck hand on the dock put the wire on the nearest file to him, and at the 24 feet signal he checks the speed of the boat.

Q. How does he check the speed? A. By putting the control lever on the automatic control. That tightens the

slack gradually and at a certain tension that is fixed there and that slows the boat up, and at the 12 feet signal, run the other wire ahead and finally when we lower the anchor and the boat is supposed to be stopped.

Q. Now, before we get to the particular incident concerning Shartle's handling of the winches on that occasion, I will ask you whether or not it is customary for the men coming on board the boat to receive some instructions from the mate as to how to handle the electric winches. A. Yes, they do get instruction.

Q. Will you tell us just what happened on this occasion in Two Harbors when you were in charge of the aft end while the vessel was moving along the dock and Mr. Shartle was handling the winches. A. After he got his 48 feet signal, he had his deck hand put the wire on the file and left his control on the off position, which locks the whole machine, and then when the slack of that wire began to come up, I just happened to be there at the time, I could have been some place else, and I noticed the wire beginning to sing.

Q. What do you mean by sing? A. When it sings, it is pretty tight. If that lever had remained on that position it could have busted the wire, and there was a deckhand on the dock who might have been hurt, and that didn't happen because I was there and happened to slap it off that position just in time, and consequently the wire didn't break.

Q. Do I understand you went over and operated the control lever yourself? A. Yes, I put the control lever off the stop position just in time.

Q. That released the tension on the wire? A. That is right.

Q. Mr. Chrobak, are the mechanics of handling these electric winches on the steamer Irving S. Olds a difficult task to learn? A. No, they are not. After about fifteen minutes of explanation and maybe an hour's practice a man should be able to do it pretty good.

Q. How long had Shartle been on the vessel at the time this happened? A. This was his second trip. We were making a five and one-half day trip.

Q. Based upon your observation of Shartle in his work at painting and his handling of the winches and any other observation that you had concerning his work, do you have an opinion as to whether he was competent or incompetent as a sailor?

Mr. Belkin: Objection.

Trial Examiner Leff: Overruled.

Q. (By Mr. Ray): Do you have an opinion? A. Yes, I do. I would say he was incompetent.

Mr. Belkin: Just a minute. You overruled my objection but it seems to me that the opinion of a seaman in this matter is of no value to the record at all.

Trial Examiner Leff: I ruled on it.

Mr. Belkin: I can't persuade you to change your ruling?

Trial Examiner Leff: Don't you often ask whether a supervisor considers an employe a good employe?

Q. (By Mr. Ray): Now, after Mr. Shartle was discharged, do you know who was put in his place? A. Yes, a seaman by the name of Jack Cole.

Q. Do you know whether or not Mr. Cole had A. B. papers? A. No, he did not.

Q. Did Mr. Cole do any work under your supervision after he was promoted to watchman? A. Yes.

Q. Will you tell us what type of a seaman he was?

Mr. Belkin: I object. It is immaterial to this record, it is absolutely immaterial and irrelevant and incompetent whether Cole was a good seaman or not. When they hired Cole, Shartle had been discharged.

Trial Examiner Leff: How do you contend that it is relevant?

Mr. Ray: For this reason, the board has taken the position as outlined, that the respondent discharged Shartle and put in his place a man who did not have A.B. papers and was not a competent seaman.

Mr. Belkin: Does the respondent contend that at the time they hired Mr. Cole they knew what he could do beyond the fact of his papers?

Trial Examiner Leff: Cole was an A.B. seaman?

Witness: No, Cole wasn't but he was on the ship from the spring fit-out.

Trial Examiner Leff: Let the witness answer.

Q. (By Mr. Ray): Do you remember the question? A. Yes, I do.

Q. Will you answer it? Read the question.

(Question read by reporter.)

A. He was a fellow who could take a job, he would do it, you wouldn't have to follow him up, you knew it was done good. After checking a while I found out he was a good man. After a short instruction on running the winches he done that job all right. As far as—I think he was a better seaman than Shartle even if he did not have his A.B. papers; I don't know whether he was able to splice, that was one job he never got to do, but any other job he done all right.

Mr. Ray: You may take the witness.

CROSS EXAMINATION.

Q. (By Mr. Belkin): What ship are you on now, Mr. Chrobak? A. Irving S. Olds.

Q. The same ship? A. Yes.

Q. How many A.B.'s do you carry on this present voyage? A. Seven A.B.'s at the time.

Q. Is that a full complement of A.B.'s? A. It is.

Q. Are you required by the Coast Guard or any other agency to carry that many? A. We are not.

Q. What is the minimum you are allowed to carry? A. Six.

Q. Do you remember how many A.B.'s you carried when the Irving S. Olds started out in the spring of 1944? A. No.

Q. As a matter of fact, wasn't it four? A. I couldn't say offhand.

Q. Was it as many as six?

Mr. Ray: I object. He has answered the question twice.

Trial Examiner Leff: Overruled.

Q. Was it as many as six? A. It could be possible, I don't know.

Q. The requirement of carrying a certain number of A.B.'s is an important requirement in the sailing of your vessel? A. Yes.

Q. You generally take care of important matters or know of them? A. Yes.

Q. Because the number of A.B.'s on board is important, I want you to try and recall, if you please, how many A.B.'s you carried when you sailed in 1944. A. That varied with the season.

Q. Let us direct your attention to April 1944. A. Like I say, it all depended on what A.B.'s were available; if we could get them, we would.

Q. I understand that. Since it did depend on that and other factors that you know of, will you tell me how many you carried in April, 1944. A. I don't recall.

Q. Do you recall how many were left after Mr. Shartle left the vessel on April 23, 1944? A. All I could say definitely is it was one less.

Q. The rule with respect to a minimum complement of A.B.'s is a rule that is essential to the safety and welfare of the seaman aboard the ship? A. Yes.

Q. It is dangerous to have less than six on a ship like the Olds, it isn't good practice? A. It isn't good practice. I wouldn't say it was dangerous.

Q. Now, Mr. Chrobak, you testified just a few minutes ago that during the fit-out period, which was before the ship sailed, you testified that Mr. Shartle was late two or three times, isn't that true? A. Yes, he was late.

Q. Now after the ship sailed, to your knowledge was Mr. Shartle late at any time after the ship sailed? A. He was put on the third mate's watch and from that time he wasn't under my supervision.

Q. You had no observation. So after the ship sailed you don't know whether he was late or not? A. No, I don't know.

Q. You testified you reported what you felt was dereliction of duty by Mr. Shartle to the first mate and he said he would let it ride.

Mr. Ray: He said he would let it wait.

Trial Examiner Leff: Well, he said let it run.

Q. (By Mr. Belkin): Very well, using the words of counsel, that is your testimony that you told the first mate and he said let it wait and see how it would work out? A. Yes.

Mr. Ray: Thank you.

Q. (By Mr. Belkin): Now you said in response to a question by Mr. Ray that you found out Shartle was telling the men they shouldn't work so fast as they were. How did you find that out? A. I heard his statement to the other fellows.

Q. While you were present? A. That is right.

Q. Shartle said that—you knew at that time that Shartle was organizing for the union? A. No, I did not.

Q. Did you know at any time that Shartle was organizing for the N.M.U.? A. Yes, after he was discharged.

Q. Never knew it beforehand? A. No.

Trial Examiner Leff: How did you know about it?

The Witness: Talking to the mate and third mate.

Trial Examiner Leff: Had they known about it while Shartle was still employed?

The Witness: I don't think they did until they seen an article in the Plain (?) Dealer about it.

Trial Examiner Leff: Plain (?) Dealer?

The Witness: Cleveland Dealer.

Q. (By Mr. Belkin): That was sometime after his discharge? A. Yes.

Q. Some time after the election? A. I don't know.

Q. So that in your conversation with the first mate and third mate you were informed because they had read an article in the Cleveland Dealer that Shartle was an organizer? A. That is the way I got the idea that he claimed he was discharged for union activity, that is how the subject was brought up.

Q. In other words, this article in the paper was in reference to a charge filed with the National Labor Relations Board by the union? A. That is right.

Q. When did you first find out that—strike that. Now in your conversation with the first mate and third mate, can you recall just when that conversation occurred? A. No.

Q. Do you remember where it took place? A. On the ship.

Q. Do you remember what, if anything, the first mate said to you? A. No, it was just generally mixed in with the other subjects.

Q. Give me the general gist of it, not the exact words, but what, if anything, did the mate say? A. He said he saw by the paper that Shartle was discharged for union activity.

Q. Did he say anything else? A. It was on that subject, I can't recall exactly.

Q. What did the third mate say? A. He wasn't there at the time. What I meant was I had those conversations with the mate and third mate but not at the same time.

Q. Directing your attention to your conversation with the third mate, when did that occur? A. I don't know.

Q. After the election? A. After Shartle was discharged.

Q. After his discharge? A. Yes.

Trial Examiner Leff: How long after?

The Witness: That would be guessing, too. I think the article in the paper came out about three or four days later, so it was the following trip.

Trial Examiner Leff: You mean about three or four days after the discharge?

The Witness: Yes.

Q. (By Mr. Belkin): In your conversation with the third mate can you tell us what the third mate said to you, and what, if anything, you said to him? A. It was on the same subject, did I see in the paper where Shartle claimed he was discharged for union activities, and I said, "No, I did not," and I was shown.

Q. And it is your sworn testimony that prior to the time of these conversations you had no knowledge at all that Shartle was a member of the N.M.U.? A. No, I did not know it.

Q. That is your testimony? A. That is right.

Q. While on board the Olds in 1944, did you at any time receive any copies of the Pilot? A. Yes.

Q. Did you read those copies? A. Yes.

Q. Who gave you the copies of the Pilot? A. They weren't given to me, I saw them on the table in the recreation room and picked it up and read it.

Q. Did you read any other literature at any time? A. Yes.

Q. What other literature did you read? A. I don't recall, there were pamphlets.

Q. Were you given this literature by anyone? A. No, not given it. It was on the table in the recreation room.

Q. As a matter of fact, isn't it true, Mr. Witness, that Howard Shartle gave you union literature and copies of the Pilot from time to time? A. No, that literature was on the table in the recreation room. How it got there, I don't know.

Q. You never saw Howard put it out there? A. No.

Q. Never saw him distribute any union literature to anyone else? A. Never did.

Q. Do you know how that union literature got aboard ship? A. No, I didn't know but I surmised.

Q. How did you surmise? A. The fellows that were up town they got it and put it on the table.

Q. Did you ever ask who brought it in? A. No.

Q. Did you ever hear anybody else ask how it came on board? A. No, I did not.

Q. We have testimony that you received copies of union literature from Howard Shartle. Do you deny that you might have received literature from Shartle? A. I deny that I received any literature.

Q. Or any other member of the crew? A. That is right.

Q. You just read the Pilot and other material as you saw it scattered about? A. That is right.

Q. While you were on board the ship did you see the pamphlet entitled "N.M.U. Fights Jim Crow"? A. Yes.

Q. How did that get aboard the ship? A. Same way as the rest of them, it was right on the table, I didn't question how it got there, I read it and left it lay.

Q. You knew, of course, that the purpose of having that pamphlet there was to fight the union, didn't you?

Mr. Ray: I object to that question.

Trial Examiner Leff: Sustained.

Q. (By Mr. Belkin): Did you believe, Mr. Chrobak, that the pamphlet "N.M.U. Fights Jim Crow" was brought aboard by the union? A. I thought it was another piece of union literature until I read it.

Q. Then you realized that the union did not put it there? A. Then I didn't know.

Q. Do you believe now that the union put that there?

Mr. Ray: I object.

Trial Examiner Leff: I sustain the objection.

Q. (By Mr. Belkin): Were you familiar with the fact that in the spring of 1944 the N.M.U. was conducting a campaign prior to the election aboard your ship? A. Yes, I was.

Q. Did you know that the men were discussing the matter of joining the N.M.U. or not? A. Never heard anyone discussing it on the ship.

Q. At no time? A. At no time.

Q. By the way, do you know Mr. John Zyp? A. Yes, sir, I do.

Q. Who is he? A. He is the—I believe his title is personnel agent for the Pittsburgh Steamship Company.

Q. And to your knowledge what are the scope of his duties?

Mr. Ray: I object to that question.

Q. (By Mr. Belkin): Let me change it to make it clearer. Just what does Mr. Zyp do for the company? A. I believe that he is the man that tries to get the men to man these ships. Whenever we were short a man we call Mr. Zyp. He tries to get a man to replace.

Q. He hires them and sends them out to you? A. Yes.

Q. By the way, Mr. Chrobak, since you are on the same ship I wonder if you can tell us how many of the unlicensed personnel of last year are still with you. A. Unlicensed personnel?

Q. Yes, in percentages.

Mr. Ray: I object. What is the relevancy of a question of that type.

Trial Examiner Leff: Overruled.

A. There wouldn't be anybody. There was a change of captain, there is a different captain on the Olds this year.

Q. (By Mr. Belkin): Therefore many of the men who served aboard the Olds last year have gone with the captain to another ship? A. It so happens this captain is retired.

Trial Examiner Leff: What happened to the men who served last year?

The Witness: They got jobs on other ships.

Q. (By Mr. Belkin): In other words they have scattered to different ships? A. That is right.

Q. That generally happens when the captain changes ship or retires? A. That is right.

Q. It is true, isn't it, that sometimes the men follow the first, second or third mate whom they like? A. That is correct.

Q. Now, when Mr. Shartle was discharged on April 23, 1944, did he come and talk to you about his discharge? A. Not about his discharge.

Q. Did he come and talk to you? A. We had a conversation.

Q. Where did— A. It was very short.

Q. Where did that conversation occur? A. On the ship.

Q. Where did the conversation occur on the ship? A. Just outside the mate's door.

Q. Do you recall what, if anything, he said to you, and what if anything, you said to him? A. Yes.

Q. Tell us what was said. A. Shartle says, "You can't lick the Lake Association." I said, "What do you mean?" He said, "You know what I mean." That was the end of the conversation.

Q. Now, during the month of April, prior to the discharge of Mr. Shartle, had you had any occasion to criticize him for his work? A. During what?

Q. During the month of April, prior to his discharge, the first three weeks of April. A. Yes, during fit-out.

Q. When did you finish fit-out? A. We started in the last part of March and finished the first part of April.

Q. In other words, you finished the 3d or 4th of April? A. It was the first week.

Q. Now, from the 3d or 4th of April to April 23d, did you at any time criticize Shartle for his work? A. No, I did not.

Q. Did you at any time report any alleged misconduct by Shartle to the captain? A. No.

Q. Referring to this matter of tightening up the winches have you in your experience as an officer aboard the Pittsburgh ships ever found a man other than Shartle who made a mistake in handling the controls of the winches? A. Yes.

Q. Did you have occasion to fire such a person this year, 1945? A. That hasn't happened this year.

Q. Did it happen any other time in 1944 other than you have told us? A. I don't recall.

Q. Did it happen at any time in 1943? A. Yes.

Q. Do you remember who made the mistake in handling the winches? A. I do not know who made the mistake but I know it happened.

Q. Can you tell us whether the person who did it was discharged? A. He was demoted.

Q. He wasn't discharged?

Trial Examiner Leff: Who was that person?

The Witness: I don't recall who it was.

Trial Examiner Leff: On what ship?

The Witness: On the Enders M. Vortes.

Trial Examiner Leff: When?

The Witness: In 1943.

Trial Examiner Leff: What was he demoted from?

The Witness: From watchman to deckhand.

Q. (By Mr. Belkin): Did that cause him a loss in pay? A. Yes.

Q. How much? A. Roughly, about $45.00 a month.

Q. Now, do you know of anyone else besides the individual who was demoted, concerning whom you just talked, who committed the same error in 1943? A. Anybody else besides this?

Q. Yes. A. No, I can't recall.

Q. You say there were others. Do you remember anybody in 1942? A. In 1942 I wasn't on that type of a ship.

Q. In 1941? A. In 1941 I wasn't on that type.

Q. In 1940? A. No. It was in 1943 I was on that type of vessel until now.

Q. In other words, this is the type of vessel that uses this particular kind of winch? A. That is right.

Q. It isn't uncommon for a person who has just begun to handle these controls after several lessons to make a mistake? A. I would say it is unusual to make a mistake because that is so important—

Q. That no mistake should be made?

Mr. Ray: Let him finish.

Mr. Belkin: Yes, please, finish.

The Witness: That is so important that we stress it right from the beginning of learning to operate those winches and we try to be certain that the man who is going to run them knows how to do it.

Q. This was only Shartle's second trip aboard the ship? A. Yes.

Q. How many times had he handled the winches before? A. For me it was the only time.

Q. You don't know whether he handled the winches for the third mate? A. He did for the third mate.

Q. Do you know whether he made any mistake while on the third mate's watch? A. I don't know whether he did or not.

Q. However, you said it is very important to have a full complement of A.B.'s aboard the ship. A. According to the law it is.

Mr. Belkin: That is all for the board.

Trial Examiner Leff: Am I correct in understanding that you testified that after the fit-out you never criticized Shartle for his work nor reported any alleged misconduct to the captain?

The Witness: That is correct. I never had occasion.

Trial Examiner Leff: When did the winch incident happen?

The Witness: After the fit-out.

Trial Examiner Leff: Then you didn't report it to the captain?

The Witness: No.

Trial Examiner Leff: Did you report it to anybody?

The Witness: To the mate, first mate.

Q. (By Mr. Belkin): I would like to ask this question to clarify the record. How long before April 23d, to your recollection, did the winch incident occur? A. How long before—

Q. I withdraw that. You said it was during the second trip. Do you remember when the second trip occurred? Do you remember when you came into Two Harbors? A. I don't remember the exact date.

Q. About the 15th of April? A. Yes.

Trial Examiner Leff: When was it with reference to Shartle's job, how long before Shartle was discharged?

Mr. Belkin: Well, if he has testified the 15th of April—

Trial Examiner Leff: It is easier to remember with reference to events than dates.

The Witness: At the end of the trip, that was when the discharge occurred.

Trial Examiner Leff: Where was he?

The Witness: In Conneaut, Ohio.

Q. (By Mr. Belkin): How long a trip is it from here to Conneaut? A. The ordinary summer trips are five and one-half days, that varies with the weather. It might take longer.

Q. So it is roughly a week before you get to Conneaut from Two Harbors. A. A week for us is a long time.

CROSS EXAMINATION.

Q. (By Mr. Rosenfeld): You say you had eight men working on the paint job? A. That is correct.

Q. Two stages on each side? A. All on one side.

Q. Four stages, with two men on each? A. That is right.

Q. And it took you eight days to complete painting the hall from the gunnel to the water's edge? A. That is right.

Q. How long is that ship? A. Six hundred and thirty-nine feet.

Q. What is the distance from the water line to the gunnel? A. Thirty feet.

Q. And you say that the painting was done by fleets, is that right? A. That is right.

Q. What are the dimensions by fleet? A. A fleet is the width of that stage plank, sixteen feet, and the height of the full ship, which would be from the gunnel to the water's edge.

Q. How long does it take on the average to complete painting a fleet? A. One hour.

Q. One hour. How many fleets would there be—withdraw that—there would be about forty fleets along the side of the ship? A. I would have to figure that out.

Trial Examiner Leff: Multiply forty by sixteen.

Q. (By Mr. Rosenfeld): Divide six hundred and thirty-nine by sixteen. A. That is overall.

Q. What kind of brushes do they use? A. Four inch brushes.

Q. How were the stages lowered? A. They were made fast to cleats on the deck and then as a man painted all he could reach from a certain position on the stage plank he was lowered again his height by slacking off the turn on these fleets and made fast in on the deck.

Q. Did the man on the stage control the position of the stage? A. That was my job.

Q. You on deck controlled that? A. That is right.

Q. You have a man on deck lowering the stages? A. I had to do it alone but if I got—if they were congested, if they all wanted to be lowered at the same time, I would call for help, the third mate would come along.

Q. Does it take two men? A. No.

Q. Are both ends of the staging connected to the same cleat? A. No.

Q. That means there were two fleets sixteen feet apart? A. Yes.

Q. You would lower one end first? A. Yes.

Q. How many feet? A. Until one man called you to stop.

Q. Then you would go to the other end? A. That is right.

Q. Then if you were busy the men would have to wait till you got there? A. If I was busy the men would have to wait till I got there.

Q. So that a man on the stage would not be fully in control of how quickly he finished his fleet, is that right? A. Yes, he is doing the painting, he would be in control.

Q. But if the staging were not done promptly, he would not be in control. A. That takes such a short time.

Q. Who were the other seven men working with Shartle? A. I don't recall.

Q. How do you know Shartle was working then? A. Well, since this thing was brought up, I saw his picture in the Pilot and we discussed it, that is why I remember.

Q. Who discussed it with you? A. The other fellows on the boat.

Q. You had been talking about Shartle from that date to this? A. Just when I saw his picture in the Pilot.

Q. That was two or three days after his discharge. A. No, that is this year.

Q. This year. And you don't know any of the seven other men who were painting? A. Yes, I could recall there was Jack Cole, Vogel, Eugene Tipta, and if I took long enough I probably could recall them.

Q. How long did Tipta take to finish a fleet? A. How long did he take to finish a fleet?

Q. Yes. A. I don't see why you pick out Tipta in particular.

Q. Would you mind answering that? A. I do know the average time for any of those fellows was an hour.

Q. Did you time it? A. No, not with a watch.

Q. When you say average, what do you mean, some are slow, some fast, that is what you do mean? A. By average I mean what the word implies.

Q. Some would take more than an hour and some less than an hour? A. That is right.

Trial Examiner Leff: There was another fellow working with Shartle on the same fleet?

The Witness: That is right.

Trial Examiner Leff: You say you knew Shartle was slow because he would finish his fleet about fifteen minutes behind the others?

The Witness: That is right.

Trial Examiner Leff: How did you determine that it was Shartle and not the other fellow?

The Witness: The other fellow done three-fourths of the sixteen foot length and Shartle done one-fourth.

Trial Examiner Leff: How do you know the other fellow did three-fourths?

The Witness: I was watching it.

Trial Examiner Leff: The other fellow was working much faster than the six others leaving out Shartle, was he not?

The Witness: No, I would say he was working about as fast as the others. I wouldn't say he was faster. The reason that I—that that stands out in my mind strongly is if those fellows don't go down together it makes an extra job for me.

Trial Examiner Leff: How does it work? They get on a scaffold of some kind?

The Witness: That is right.

Trial Examiner Leff: They each paint up to a certain point?

The Witness: That is right, the width of their scaffold.

Trial Examiner Leff: Yes. And you say the other fellow was painting nine feet from the top and Shartle was painting the balance?

The Witness: I was talking about the width, the distance. They all got to go down from the top to the bottom. When I said the fellow painted three-fourths, I mean the width of the plank.

Trial Examiner Leff: Shartle was painting four feet—I was wrong in my figures before,—of the sixteen feet width and the other fellow twelve feet?

The Witness: That is right.

Trial Examiner Leff: Did the other fellow complain he was getting a heavier load?

The Witness: I didn't hear him complain.

Mr. Rosenfeld: May I proceed?

Q. (By Mr. Rosenfeld): Now, coming back for a moment to Two Harbors on that winch after you slackened up that line, who operated the winch after that? A. He continued to operate it.

Q. Who gave the instructions to the winch drivers at fit-out? A. Each mate gave his own man the instructions.

Q. Were you present when the third mate instructed Shartle? A. No.

Q. Do you know, of your own knowledge, whether the third mate did instruct Shartle? A. I didn't see him instruct him but he apparently gave him instructions, that was the orders.

Q. And Shartle continued operating the winch after that? A. That is right.

Q. Now, you said that Shartle was late two or three times during fit-out. A. That is right.

Q. Now, you don't stay on the sea watches at fit-out? A. That is right.

Q. Were any other men late during the fit-out period? A. No.

Q. You kept a record of the attendance of all the men aboard the ship during fit-out? A. No, I don't.

Q. So that it is possible that other men did come late and you wouldn't know anything about it? A. No, that is not true. I would know whether they were late or not. The eight men that were working for me started in the morning, the other four would do another job. When the time came to go to work, they all came together. I would know at that time whether one was missing or not.

Q. How late was Shartle when he came late? A. Half an hour to an hour.

Q. Was he living on board the ship at that time? A. Yes.

Q. Did you go to turn him to? A. What does that mean?

Trial Examiner Leff: Let us get language the trial examiner understands.

Q. (By Mr. Rosenfeld): Did you, when you saw that Shartle did not come to work, did you go to his quarters to see what was wrong? A. I would go to each man's room

and tell him it was time to go to work. I would take my eight men with me and the third mate would take his four men.

Q. Did you instruct Shartle to return with the rest of the gang? A. When he was there, but when he wasn't there, there was nothing to do but wait till he would show up.

Mr. Rosenfeld: That is all.

Q. (By Mr. Belkin): I have one question. As a matter of fact, Mr. Chrobak, that on one occasion when Shartle was late, he had been ordered to go and see the company doctor? A. I wouldn't know about that. He couldn't have at the time he was late because the company doctor wasn't in the office till nine o'clock.

Q. Isn't it true that if he had to see the company doctor he would have to get a pass? A. Yes.

Q. That he might have been held up waiting for that pass to be typed out or prepared? A. It takes about ten seconds to make out a pass.

Q. Who makes out the pass? A. The mates.

Q. Did you check up to see whether on one of these occasions Shartle had been to see the company doctor? A. No, I did not.

Q. Do you deny that he did see the company doctor?

Mr. Ray: I object.

Trial Examiner Leff: Overruled.

The Witness: Will you repeat the question?

Q. (By Mr. Belkin): Do you deny that he did see the company doctor when he was late on those occasions? A. I don't know whether he saw a company doctor or not.

Q. You don't deny it? A. I don't deny it.

Mr. Ray: Are you through?

Mr. Belkin: Yes.

RE-DIRECT EXAMINATION.

Q. (By Mr. Ray): One question. After fit-out was finished and you began to sail and the way the watches were set, Shartle was on the third mate's watch? That is true, is it not? A. That is right.

Q. State whether or not, if Shartle was on the third mate's watch, you would have any supervision over his

work except in those situations where you are in port loading or unloading. A. I wouldn't have any supervision at sea. At the loading dock, of course, if I was loading, he would be under my supervision.

Q. And any dereliction that Shartle might have been guilty of it wouldn't be your business to report to the captain? A. That would be the third mate's job.

Trial Examiner Leff: Did you have anything to do with Shartle's discharge?

The Witness: No.

Trial Examiner Leff: Do you know the reason why Shartle was discharged?

The Witness: No.

Trial Examiner Leff: Did you recommend Shartle's discharge?

The Witness: No, I did not. The only thing I said or done that might have affected his discharge was complain to the mate in the spring.

Trial Examiner Leff: About what?

The Witness: About his work painting. The fact that he was trying to hold up the other men from doing a good job.

Trial Examiner Leff: Any further questions.

Mr. Ray: No further questions.

(Witness excused.)

Trial Examiner Leff: We will take a five minute recess.

(A five minute recess was taken.)

Mr. Ray: Mr. Sickles, will you take the stand, please.

Lester Delzell Sickles, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: State your full name.

The Witness: Lester Delzell Sickles.

Direct Examination.

Q. (By Mr. Ray): Where do you live? A. 208 Douglas Street, Boyne City, Michigan.

Q. During the spring of 1944 were you employed by the Pittsburgh Steamship Company? A. Yes, sir.

Q. On which vessel? A. On the Irving S. Olds.

Q. What was your rating on board that vessel at that time? A. Second assistant No. 2.

Q. Second assistant No. 2, what does that mean? A. I take care of the electrical equipment and such work as that.

Q. Are you an engineering officer? A. Yes, sir, licensed officer.

Q. In other words, on that vessel they have the chief engineer, assistant engineer, and second assistant No. 2, is that right? A. Yes, sir.

Q. And you say your duties are to take care of the electrical equipment? A. Yes, sir.

Q. Now, thinking back to the spring of 1944, Mr. Sickles, do you recall a watchman on board the vessel by the name of Howard Shartle? A. Yes, sir.

Q. Did you at any time talk to Mr. Shartle about union matters? A. No.

Q. Did you at any time tell Mr. Shartle that he should watch the captain and the steward because the steward was the captain's stooge and would tell the captain everything? Did you ever make a statement like that to Shartle? A. No, sir.

Q. As engineering officer, Mr. Sickles, did you have anything to do with Mr. Shartle's work as a watchman? A. No, sir.

Q. Would you be in any position to judge as to the type of work he was doing? A. No.

Q. Would you be in any position to judge whether he was competent or incompetent? A. No, sir.

Q. Did you at any time have a conversation with Mr. Shartle following his discharge in which his competency or incompetency was discussed? A. No.

Mr. Ray: That is all.

CROSS EXAMINATION.

Q. (By Mr. Belkin): While you were on board the Olds in the spring of 1944, did you know an election was coming up? A. In the spring?

Q. Yes. A. No, not at that time.

Q. When did you first find out about it? A. I couldn't say exactly when it was.

Q. Was it before Shartle left the ship? A. I think it was later than that. The first part of the season.

Q. Did you know Shartle was attempting to get members in the N.M.U.? A. No, sir.

Trial Examiner Leff: Who was the ship's organizer at that time?

The Witness: I don't know.

Trial Examiner Leff: Do you know who was the ship's organizer after Shartle left?

The Witness: No, sir.

Q. (By Mr. Belkin): Do you know whether any of the men in the aft gang joined the union? A. I couldn't say.

Q. Did any wear their CIO buttons? A. I couldn't say, never noticed.

Q. You yourself didn't oppose the union? A. No, sir.

Q. Meaning you were sympathetic to it? A. Yes, sir.

Q. Kept your hands off the whole situation? A. Yes.

Q. Did you become well acquainted with Howard Shartle personally while he was on board the ship? A. No.

Q. You did not? A. No, sir.

Q. Didn't you have conversations with him from time to time? A. No, not outside saying good morning to him, or something like that.

Q. That was all you ever said to him? A. That was all.

Q. Don't you as a matter of fact recall that about April 20th of last year Shartle came in your forecastle and had a conversation with you? A. No.

Q. While you were on board the ship, did you see any union literature around? A. I have seen it in the recreation room there, that is all.

Q. What union literature did you see? A. The Pilot, pamphlets.

Q. Did you see any letters from Mr. Ferbert, president of the company? A. No, I don't think so.

Q. Did you see a copy of the speech made by Congressman Bradley around the vessel? A. No, never seen it.

Q. Did you have a habit of looking at the bulletin boards as you went by them? A. Yes, sir.

Q. So you saw what was on the bulletin boards? A. What literature I seen was in the recreation room.

Q. And you at no time saw letters from Mr. Ferbert or a reprint of the speech of Congressman Bradley? A. Never read it, I never seen it that I know of. It may have been there.

Q. But you don't deny that they were there? A. No.

Q. Your mind is a complete blank on that question? A. What?

Trial Examiner Leff: He said he did not remember.

Q. (By Mr. Belkin): As a matter of fact, the captain and steward were very friendly aboard the Olds last year? A. As the captain and steward should be.

Q. Well, were they? A. I don't know outside of that.

Q. To your knowledge, were they friendly or weren't they? A. I wouldn't say friendly, no.

Q. Would you say they were unfriendly? A. No, outside their regular work between the galley department and the captain.

Mr. Belkin: That is all.

Mr. Rosenfeld: That is all. No questions.

Mr. Ray: No further questions.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: Off the record.

(Discussion off the record.)

Trial Examiner Leff: We will adjourn the hearing to 9 p.m. at Duluth. The hearing will be held in Room 700 in the Duluth Hotel.

(Whereupon at 3:35 p.m. the hearing was adjourned until 9 p.m. the same day.)

Hotel Duluth,
Duluth, Minnesota,
Wednesday, August 29, 1945.

The above entitled matter came on for hearing, pursuant to adjournment, at 9 p.m.

(Appearances omitted.)

Trial Examiner Leff: The hearing is in order.

ROBERT GRAHAM CARR, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: State your full name.
The Witness: Robert Graham Carr.
Trial Examiner Leff: What is your address?
The Witness: 2720-82d Street, Duluth, Minnesota.
Trial Examiner Leff: What is your work?
The Witness: Marine pilot.

DIRECT EXAMINATION.

Q. (By Mr. Ray): How long have you sailed? A. Seven years.

Q. Speak plainly and slowly so the reporter will get everything. How long have you held a license? A. Three years.

Q. What type of license is it? A. First class pilot's license.

Q. Any limitation on your tonnage? A. No, sir.

Q. By whom are you employed? A. Pittsburgh Steamship Company.

Q. In the fall of 1944, by whom were you employed? A. Pittsburgh Steamship Company.

Q. On what vessel? A. Robert W. E. Bunson.

Q. What rating on that vessel did you have at that time? A. Third mate.

Q. As third mate what watch did you stand? A. Stood six to ten in the morning, six to ten at night.

Q. State whether or not the third assistant engineer would stand the same watch in the engine room that you were standing in the forepart of the vessel? A. Yes, sir, six to ten.

Q. That would mean that he would not only be on watch at the same time but also off watch at the same time? A. Yes.

Q. What was the third assistant engineer's name? A. Ralph Scharmin.

Q. How old a fellow is Scharmin, if you know? A. He is pretty close to thirty.

Q. How old are you? A. Twenty-five.

Q. Did you and the third assistant engineer bunk together? A. Yes, we did.

Q. During the fall of 1944, were you acquainted with a fireman on board the Bunson by the name of Vogt? A. I was.

Q. What rating did he have? A. A.B. watchman.

Q. Whose watch was he on? A. The second mate's watch.

Q. What time would that be? A. Ten to two.

Q. Have you any recollection when—what date of the month, on approximately what date of what month Vogt became a member of the crew on your vessel? A. About the middle of October.

Q. Now after the middle of October and until Vogt left the vessel, did you have any conversations with Vogt himself on matters related to any union? A. No, sir.

Q. Did you have any conversation during that period of time with the third assistant engineer relating to union matters? A. Yes.

Q. Will you tell us, Mr. Carr, in a general way, what the subject matter of those conversations was? A. Well, Ralph and I argued quite a bit about the political election, the coming election, and unions in general.

Q. Now, when was the election held on your vessel, if you recall? A. The N.M.U. election?

Q. Yes. A. In June of 1944.

Q. June of 1944? A. Yes.

Q. So that at the time Vogt came aboard the Bunson, quite a bit of time had elapsed between the election and that time? A. That is right.

Q. Now, at any time in your discussions with the third assistant engineer or with any other individual on board the Bunson, did you make a statement that all officials and organizers of the N.M.U. were agitators and communists and that you would not have anything to do with them? A. No.

Mr. Rosenfeld: Was Vogt present at this time? The witness has not testified. If Vogt wasn't present I move this be stricken. I don't know what it has to do with this case.

Trial Examiner Leff: Well, it is in already, I am not going to strike it.

Mr. Belkin: Mr. Examiner, if the examiner please, I refrained from making an objection to this type of question

just made by the counsel for the respondent but it seems to me that it is an objectionable form of questioning, no attempt has been made by counsel to evoke from the witness what if anything was said. It seems to me that to ask this type of question without laying a foundation for it is improper.

Trial Examiner Leff: Does the record made during the board's case contain any testimony that the witness did make such a statement at any time?

Mr. Belkin: Yes.

Trial Examiner Leff: The question is proper. Overruled.

Mr. Ray: May I have the indulgence of the examiner for a minute.

Q. (By Mr. Ray): How many, if any, conversations did you have with the third assistant engineer during which Vogt was present in which the subject of unionism was discussed? A. Three or four, not more than four.

Q. And where did those conversations take place, if you recall? A. Most of the conversations were in the mess hall.

Q. Do you recall at what time of the day or night they took place? A. About 10:10, after that, at night.

Q. Just tell us how you would happen to meet back there? A. When we were off watch we would naturally go back for coffee, sandwiches, or something. I was off at ten o'clock, it took me ten minutes before I was back there. The third assistant's watch would come off the same time, and we would sit around in the mess hall and talk till we got sleepy.

Trial Examiner Leff: What views did you express?

The Witness: Our conversations—mostly, what I said, was the coming political election and unions in general, not necessarily any specific union, the coal miners union, auto workers, and such.

Trial Examiner Leff: What position did you express with reference to union matters? Were you for or opposed to the union?

The Witness: No, I told the third assistant that if the boats were organized of course I couldn't bump a wheelsman nor could he bump an oiler, and the second mate and the second assistant could bump Ralph and I.

Trial Examiner Leff: You were pointing out the disadvantages of rotary hiring?

The Witness: Yes.

Trial Examiner Leff: What view did the third assistant take, was he in favor of it?

The Witness: No.

Trial Examiner Leff: He was opposed to it, too?

The Witness: Yes.

Trial Examiner Leff: So you had these regular conversations and each one expressed to the other his disapproval of the rotary hiring system?

The Witness: Yes, sir.

Q. (By Mr. Ray): Prior to the time you were on the Bunson, Mr. Carr, had you or had you not, been a member of the union? A. Yes, I was a member of the CIO Steel Workers organization.

Q. How long were you a member of that organization? A. I was a member in the winter of 1942—the winter of 1943, I think it was—when I worked in the shipyards in Duluth and I got a leave of absence and I never went back to the shipyards again. I got employed elsewhere.

Q. Under what circumstances were your connections with the union severed? A. When I started sailing, I got a leave of absence to go off the job in the spring.

Mr. Belkin: How is this relevant?

Trial Examiner Leff: I don't know.

Mr. Ray: If the examiner please, it has a definite bearing on his attitude toward the union.

Trial Examiner Leff: Has he not expressed himself as being opposed?

Mr. Ray: On one proposition. It seems to me you are pre-judging him on the issue.

Trial Examiner Leff: Perhaps. Go ahead.

Q. (By Mr. Ray): What, if any, opinion did you express with respect to the unions, and the way they were being operated?

Trial Examiner Leff: When?

Q. (By Mr. Ray): At the time you and Scharmin were discussing unions in the mess hall on the Bunson after the middle of October? A. Will you repeat that?

Mr. Ray: Will you read the question, Miss Reporter?

(Question read by reporter.)

The Witness: I told Ralph—we both agreed we were in favor of unions if they were run right.

Q (By Mr. Ray): Now, Mr. Vogt has testified in the hearing in this case that during those conversations which started out as political discussions and ended up in discussions of the union, that you became quite violent. Did you become violent at any time in your discussion of the union? A. No, sir.

Q. He also testified that your whole attitude towards him changed—I mean, was evidenced by your attitude on union questions and that you left him severely alone, is that right? A. No, sir.

Q. Mr. Carr, during the early part of the season, did or did not Captain Lawless issue any instructions to you in connection with the rest of the mates with respect to the attitude that should be taken on union matters, union organizations? A. Yes.

Q. What instructions were given to you?

Mr. Belkin: Mr. Examiner, there is no allegation by the board as to any anti-union conduct on board the Bunson prior to October, 1944. The question just directed to the witness involves the period much before October 1944 and I feel the question is therefore objectionable.

Mr. Ray: I submit that if the witness is permitted to answer the question, it will become apparent, and it is apparent by the question itself, that there is no time limit placed upon when—on the time that would be covered by the instructions.

Trial Examiner Leff: Let me phrase the question. Did you at any time while you were with the Pittsburgh Steamship Company ever receive any instructions from the captain with respect to the manner in which you were to conduct yourself regarding the union organizing?

Mr. Belkin: I think, if the examiner please, it should be confined to the particular season.

Trial Examiner Leff: I am asking him if at any time, then we can come down to the particular season. Did you?

The Witness: No, sir.

Trial Examiner Leff: Go on from there, Mr. Ray.

Q. (By Mr. Ray): During what season and on what vessel did you receive such instructions? A. The steamer Bunson in 1944, the early part of the season.

Q. What were those instructions? A. Captain Lawless told us we should be neutral, and it was up to the men themselves, it wasn't any of our business.

Q. Mr. Vogt has testified at this hearing that you and the third assistant engineer talked unionism virtually every night, is that or is that not a fact? A. No, sir, the union was a dead issue, it was all over with when the election was over. All our conversation was about the political election.

Trial Examiner Leff: Try to keep your voice up, Mr. Carr. You have a tendency to drop your voice toward the end of an answer.

Q. (By Mr. Ray): Mr. Carr, what do you conceive to be the rotary hiring system as advocated by the National Maritime Union? A. Well, that is, in slack times, when a licensed officer couldn't bump a wheelsman or watchman. In slack times, a licensed officer, if the boats were organized, couldn't bump a wheelsman or watchman.

Q. What do you mean by bump? A. In slack times the first mate could bump the second mate, the second mate could bump the third mate.

Trial Examiner Leff: I think the witness is confused in the use of the word bump. Under what circumstances does a licensed officer ever bump a wheelsman? Bump, as commonly used, means to replace.

The Witness: Yes.

Trial Examiner Leff: What do you mean when you say a licensed officer couldn't bump a wheelsman?

The Witness: If the boat was organized, when the crews were hired by the union, the mates wouldn't belong to the union, therefore they couldn't bump the wheelsman. After putting in time, I don't think it is right.

Q. (By Mr. Ray): In other words, you were expressing your opinion as to how the operation of the union would affect you personally? A. That is right.

Mr. Ray: That is all.

Cross Examination.

Q. (By Mr. Belkin): Just to clarify the record, you mean by bump to take the job of? A. Yes.

Q. As you understand the hiring system of the Pittsburgh Steamship Company right now, if there were slack times—you are a third mate, are you not? A. Yes.

Q. A second mate might take your job and you might take the job of a wheelsman who is a member of the unlicensed personnel at this time? A. That is right.

Q. And it was your understanding that under rotary hiring, you, a licensed officer, could not take the job of a wheelsman without objection by the union? A. That is correct.

Q. You testified, did you not, Mr. Carr, that on at least four occasions you discussed the union with Mr. Scharmin in the presence of Bob Vogt? A. That is right.

Q. Who else was present? A. The fireman, wheelsman, and the rest of the watch.

Q. The rest of the watch that had just finished its duties? A. In the mess hall.

Q. And it is true that at least on one other occasion you discussed the union in the presence of others in the wheelhouse? A. That is right.

Q. And I understand also that both you and Mr. Scharmin in your discussions with each other stated you were opposed to rotary hiring, as you knew it? A. That is right.

Q. You knew, of course, that rotary hiring was one issue in which the union was very much interested? A. Yes.

Q. How did you find that out? A. From signs in the Soo River, it stated on that, from the Pilot, and literature put up on the bulletin board.

Q. Now, at any time during your arguments or discussions with Mr. Scharmin, did you get excited, or were you always calm? A. No, I did not get excited.

Q. Always calm. You would carry on the conversation dispassionately? A. Yes.

Trial Examiner Leff: Is it fair to say you were agreeing with Scharmin or disagreeing with him?

The Witness: No, I would say I was agreeing.

Trial Examiner Leff: And you both advocated the same point of view?

The Witness: Not always.

Mr. Belkin: I think the examiner should designate with respect to what they agreed on.

Trial Examiner Leff: I am referring to the union.

The Witness: Ralph and I agreed on the union.

Q. (By Mr. Belkin): You disagreed on Roosevelt and Dewey for president, did you? A. Yes.

Q. By the way, which were you for?

Mr. Ray: I object to that.

Trial Examiner Leff: Sustained. How about violating the secrecy of the ballot that the board counsel are always hollering about?

Mr. Ray: You can underline that.

Q. (By Mr. Belkin): You say Captain Lawless instructed you to be neutral as far as the union was concerned? A. That is right.

Q. When was this information or instruction given you? A. In the spring of 1944.

Q. Was that in April, to the best of your recollection? A. Yes.

Q. Where were you given this instruction? A. In his room.

Q. Who else was present at the time? A. The other two mates.

Q. Nevertheless you and Mr. Scharmin carried on discussions in the presence of members of the crew in the wheelhouse and mess hall in which you both stated opposition to the union, did you not? A. Yes.

Q. Did Captain Lawless ever reprimand you for carrying on such a discussion? A. No.

Q. Did any other member of the licensed personnel reprimand you or Mr. Scharmin, to your knowledge, for carrying on such a discussion? A. No.

Q. It was no secret? You shook your head. What do you mean by that? A. Made no secret of it.

Q. You made no secret of it that you were carrying on conversations with Mr. Scharmin? A. It was no secret.

Q. Everybody in the boat knew it, I take it? A. Yes.

Q. Now, as a matter of fact, is it true that the union was a dead issue in October of 1944? A. Yes, sir.

Q. And is it true that all your conversation was concerning the political election? A. Not all our conversation.

Q. Didn't you tell us just a few minutes ago that the union was a dead issue and it was all over with and all your conversation was about the political election? A. Yes, sir.

Q. How do you reconcile that testimony with your prior testimony that you also discussed the union on four occasions after talking about the election? Which is true, Mr. Carr? A. Will you repeat that again.

Mr. Belkin: Read the question.

(Question read by reporter.)

The Witness: Yes, we discussed the union on four different occasions.

Q. (By Mr. Belkin): So it really was not a dead issue in October, 1944?

Trial Examiner Leff: I don't remember this. Did you discuss the union with Scharmin prior to the election? I am referring to the National Labor Relations Board election.

Mr. Belkin: If the examiner please, you are stealing my thunder. Read the last question.

(Question read by reporter.)

The Witness: Yes, it was pretty near dead.

Q. (By Mr. Belkin): But you still discussed it in October, 1944? A. Yes.

Mr. Ray: He so testified.

Q. (By Mr. Belkin): Now, Mr. Carr, it is true, isn't it, that prior to October 1944, you held discussions with Mr. Scharmin concerning the election and the union in the mess hall? A. Yes.

Trial Examiner Leff: What election are you referring to?

Mr. Belkin: I am just referring to the national election.

Trial Examiner Leff: What national election?

Mr. Belkin: Political election.

Q. (By Mr. Belkin): Now, as a matter of fact, it is true you held discussions concerning the union and other matters in April and May, 1944? This was a common thing for you to talk to Mr. Scharmin about matters of that kind? A. Yes.

Mr. Ray: I object to that question on the ground that there is no testimony in the record that such discussions were had. The testimony of Vogt is confined to the time

from the middle of October to December 20, 1944, and the question and answer are irrelevant.

Trial Examiner Leff: Irrelevant for what purpose? Irrelevant to the issues of the case?

Mr. Ray: To the issues of the case.

Trial Examiner Leff: Objection overruled. The time to make an objection is before a question is answered and not after it is answered.

Mr. Ray: Is that the sole reason upon which the trial examiner's ruling is based?

Trial Examiner Leff: That, coupled with the fact that the trial examiner thinks the question is relevant.

Q. (By Mr. Belkin): Will you tell me on how many occasions in April and May, to the best of your recollection, you talked about the union and other matters with Mr. Scharmin in the mess hall?

Mr. Ray: I object to that question, not only on the ground formerly stated, but on the ground that Mr. Belkin, attorney for the board, has stated in the record that as far as the steamer Bunson is concerned, the board makes no allegations of unfair labor practice on that vessel prior to the time that Mr. Vogt came on board the vessel, which the record shows was October 20, 1944, and the question is therefore irrelevant and beyond the issues of this case.

Mr. Belkin: It may well be that the board will make such an allegation after the testimony of this witness is completed.

Trial Examiner Leff: The complaint, as I read it, covers all the vessels on the Pittsburgh line. I am governed by the complaint.

Mr. Ray: Isn't the board bound by statements that its counsel makes.

Trial Examiner Leff: Only if the complaint is ambiguous.

Mr. Belkin: Will you answer my question?

Mr. Ray: Just a minute, I want a ruling on it.

Trial Examiner Leff: Of course, if Mr. Belkin states for the record that no such claim is made, I will for the purpose of eliminating testimony—

Mr. Belkin: As you recall, Mr. Examiner, we have had no opportunity to see this gentleman before, and we have not been able to determine exactly what occurred on board

the Bunson, we are determining it now. If it is within the pleadings, I think it is proper, and I think it is within the pleadings.

Trial Examiner Leff: Yes, I agree it is within the pleadings. The only reason for hesitation on my part is the statement of Mr. Ray that you conceded that you were making no such claim.

Mr. Belkin: I intended to make no such concession. It was Mr. Ray who attempted to direct this witness' attention to a discussion with the captain of this ship early in the spring of 1944, opening up for examination that entire period. At that time I thought it was improper and was overruled. I thought it was improper because I thought it was bringing in a matter concerning which we had no information.

Trial Examiner Leff: I recall that at that time you made some objection and I overruled the objection on the ground that it was within the issues of the case and I still think so, and this time Mr. Ray's similar objection is overruled.

Mr. Ray: Before you make your final ruling, I would like to be heard further, if the examiner please.

Trial Examiner Leff: Perhaps you can persuade me to reverse my ruling.

Mr. Ray: I would like, before I make any further statement, to have the stenographer, if she can find it, read the exact words of Mr. Belkin in connection with this issue.

Trial Examiner Leff: You just heard it. In brief, Mr. Belkin's position—I hope I am stating it correctly—is that the evidence which he is now seeking to adduce is within the issues as framed by the pleadings in this case. The mere fact that no testimony was adduced during the trial of the board's case on the question as to whether unfair labor practices occurred on board this particular vessel prior to October, 1944, does not preclude him, according to Mr. Belkin, from adducing evidence at this time, since this witness was not available to him while he presented the board's case. Is that your position?

Mr. Ray: If that is the statement of the trial examiner's position.

Trial Examiner Leff: That is the statement of Mr. Belkin's position with which I am inclined to agree.

Mr. Ray: I now make a further suggestion that the question is objectionable on the ground that the witness' prior statement that Captain Lawless had issued instructions with respect to the period prior to the time that Vogt came on the vessel does not open the issue as to whether the conversations were had between the third mate and the third assistant engineer, it is beyond the scope of direct examination, and if the answer is permitted, I think the counsel for the board should be required to make Mr. Carr his witness for that purpose.

Trial Examiner Leff: Well, I don't know just what that means. As I construe the law of evidence—I don't know how it is applied in the State of Minnesota—when you have a witness on the stand for the first time, either side can examine him fully on any issues framed by the pleadings in the case, whether or not testimony on that specific subject was adduced during direct examination.

Mr. Ray: In other words, as you construe the rules of evidence, you are not confined in cross examination to matters brought out upon direct examination.

Trial Examiner Leff: That is substantially correct, provided, of course, it is within the issues.

Mr. Belkin: Now, I want to ask you that. Do you recall the question?

The Witness: No.

Trial Examiner Leff: Wait a minute. Just let me announce my final ruling. Objection overruled.

Q. (By Mr. Belkin): Will you answer it, please? A. What was the question you wanted?

Q. Let's go back. I believe you stated to me a minute or two before we had this argument that you and Scharmin had had discussions regarding the union and other matters in April and May of 1944 in the mess hall, and I would like to have you tell us what you said to Scharmin and what he said to you.

Mr. Ray: I would like to have it understood in the record, I would like to be advised by the trial examiner, whether Mr. Carr, in answering this question, becomes a witness for the board or the respondents.

Mr. Rosenfeld: Due to the fact that the objection is overruled, I believe that settles it.

Trial Examiner Leff: No, he is not asking me to reverse my former ruling, he is asking me to rule that from this point on and as long as this line of questioning continues, the witness should be regarded as a witness for the board.

Mr. Rosenfeld: That is the same thing.

Trial Examiner Leff: No, it is not the same thing. I decline to make any commitment on that subject.

Q. (By Mr. Belkin): Will you answer my question? A. What I said before, the same thing, I talked about that I couldn't go back wheeling and he couldn't go back as an oilsman.

Q. In other words, you outlined to each other the disadvantages of rotary hiring as you saw it? A. Yes, we said it wasn't good for he and I.

Q. Now, Mr. Carr, in your discussions involving the union, did you touch upon any other questions besides the rotary shipping list? A. No.

Q. Isn't it true, Mr. Carr, that in your previous testimony on direct examination, that you said that in your conversations with Scharmin you said unions were all right if they were properly run? A. Yes.

Q. In other words, you did discuss the question of how unions were run? A. No, I said if they were run right, I was for them.

Q. Did you discuss in any way how you felt the unions were run wrong? A. No.

Q. Never discussed that? A. No.

Q. Now, did Captain Lawless ever reprimand or criticize either you or Scharmin for your discussing—strike the word discussing, make it discussion of the rotary shipping list in the presence of the men?

Mr. Ray: He has answered that.

Mr. Belkin: No, he has not. Prior to June 6, 1944?

The Witness: No, sir.

Mr. Belkin: That is all.

Cross Examination.

Q. (By Mr. Rosenfeld): We are talking now about the period after October 1944 when Bob Vogt was on the ship, you testified that you and the third assistant and other members of the crew on the six to ten watch would

gather in the mess hall after the end of your watch and discuss things? A. That is right.

Q. And there you spoke about a variety of matters? A. That is right.

Q. Including the union? A. Yes, I mentioned that.

Q. Now, how did the conversation of the National Maritime Union arise usually in the course of these discussions? A. Through our discussion of the coming election and I didn't figure it was right to have some of these strikes in war time, back and forth from that.

Q. How did the discussion of strikes in war time lead to the discussion of the Maritime Union? A. We would say something about that they should not strike.

Q. What else did you say? A. That is all.

Q. From there you got into the question of rotary hiring? A. No.

Q. How did you get into the matter of rotary hiring? A. Ralph went on talking about the union and I just told Ralph I didn't think it was right.

Q. What was right? A. Rotary hiring.

Q. First you spoke about strikes in war time? A. That is right.

Q. Then the Maritime Union in war time? A. That is right.

Q. And you got onto rotary hiring? A. That is right.

Q. You didn't go from rotary hiring to discussing the union? A. The crew were discussing about the union.

Q. All right, what did the crew say about the union? A. I can't recall.

Q. Well, you answered, did you not, that the crew were talking about the union? A. Yes.

Q. Did you disagree with what some of the crew members said? A. No.

Q. Always agreed with them? A. I never had much comment.

Q. You answered them, is that right? A. Yes.

Q. What kind of an answer did you make? A. I told the third assistant that I didn't think that was right.

Q. What was right, the union or rotary hiring? A. Rotary hiring.

Q. For that reason the union was wrong? A. I never made that statement.

Q. Had you heard of the N.M.U. before 1944? A. Yes.

Q. How did you hear about it? A. On the lakes.

Q. Did you read the Pilot? A. Yes.

Q. Did you read other literature discussing the union? A. Yes.

Q. What other literature? A. Pamphlets distributed aboard the boat.

Q. What kind of pamphlets? A. Pamphlets telling what the union wanted.

Q. Did you form an opinion about the union from those pamphlets? A. No.

Q. None whatever? A. No.

Q. But you did form an opinion about rotary hiring? A. Yes.

Q. So you did form an opinion?

Trial Examiner Leff: About rotary hiring.

The Witness: Yes.

Q. (By Mr. Rosenfeld): And about the union that advocated rotary hiring? A. Yes.

Q. Do you know who Joe Curran is? A. President of the union.

Q. Do you know anything else about him? A. No, sir.

Mr. Belkin: I object to this line of testimony. Whether the witness has heard or has not heard of the president of the Maritime Union is not material unless it is—

Trial Examiner Leff: I can't see where you are leading?

Mr. Rosenfeld: My point is that in the direct examination the witness was asked a direct question as to what he said about the union. I don't propose to ask him a point-blank question.

Trial Examiner Leff: He didn't deny it.

Mr. Rosenfeld: Precisely.

Trial Examiner Leff: What do you want to prove?

Mr. Rosenfeld: Do I have to tell you that now?

Trial Examiner Leff: I will let you continue for two minutes and see where it leads.

Q. (By Mr. Rosenfeld): Now that Mr. Ray has accomplished his original purpose of warning the witness—

Trial Examiner Leff: I think that remark is wholly unnecessary, Mr. Rosenfeld.

Mr. Rosenfeld: Miss Reporter, will you go back to my last question.

(Question and answer read by reporter.)

Q. (By Mr. Rosenfeld): You don't know anything else about the man? A. No.

Q. Do you know anything about Jack Lawrenson?

Mr. Ray: It is understood that my objection goes to this entire line of testimony.

Trial Examiner Leff: Yes.

The Witness: I have heard of him.

Q. (By Mr. Rosenfeld): What did you hear about him? A. I heard he was one of the officers of the union.

Q. Anything else? A. No.

Q. Did you ever hear of a Ferdinand Smith? A. Yes.

Q. What do you know about him? A. Nothing, except that he is an officer of the union, I had that impression.

Q. That is all you know? A. Yes.

Q. Did you ever hear of M. Hedley Stone?

Mr. Ray: I renew my objection that this is wholly irrelevant.

Q. (By Mr. Rosenfeld): Did you hear of him? A. No.

Q. You heard about Curran, Lawrenson and Smith through various publications that came to your attention? A. That is right.

Q. By reading the Pilot? A. That is right.

Q. Did you hear about them by reading material published by the Seafarers International Union? A. No.

Q. You never did? A. No.

Q. Did you ever discuss these officials, Curran, Lawrenson, and Smith or Stone while you were on the Bunson? A. No.

Q. Did you ever hear anybody discuss them on the Bunson? A. No.

Q. Did the third assistant engineer mention any of these names? A. No.

Q. Now, you spoke about—earlier you testified that you had no opposition to unions that were run right. A. No, I haven't.

Q. When did you discuss the question of unions being conducted properly while you were on the Bunson? A. When?

Q. Yes. A. In the fall of 1944.

Q. How did that discussion start? A. Through some of the strikes, coal miners' strike, things like that.

Q. Now you said that you learned about rotary hiring from the Pilot and signs at the Soo River and bulletins on the ship? A. That is right.

Q. What bulletins on the ship? A. That were put up on the bulletin board.

Q. Did you learn about rotary hiring from a letter sent to the ship signed by Mr. Ferbert, president of the company? A. No, sir.

Q. Did you see that letter? A. I saw a letter.

Q. Did you read that letter? A. Yes.

Q. How many—was there more than one letter? A. Yes, I believe one full page and part of another.

Q. Then there was a second letter? A. I don't remember a second letter.

Q. Do you remember the contents of that letter you saw? A. No.

Q. You don't know whether it spoke of rotary hiring or anything else? A. No.

Q. Don't you, as a matter of practice, read such letters which are posted on the bulletin board? A. If I go by the bulletin board, I do.

Q. Do you follow out the instructions in the letters if they contain any instructions?

Mr. Ray: I object. There is no issue involved as to whether instructions were given or were obeyed or disobeyed.

Trial Examiner Leff: I think this cross examination is going pretty far afield.

Mr. Rosenfeld: I find it difficult to conduct a cross-examination by asking direct questions which suggest the answers to the witness, and I think—

Trial Examiner Leff: What are you trying to prove?

Mr. Rosenfeld: I am going to find out about rotary hiring, he said he found out about it on the bulletin board.

Trial Examiner Leff: Did not the witness testify that he discussed rotary hiring before the election.

Mr. Rosenfeld: This letter—

Trial Examiner Leff: Immediately before.

Mr. Ray: If the trial examiner please, the witness has stated several times what his views on the rotary hiring system as applied to him are. It seems to me that it is wholly immaterial what the source of his information or the source of his ideas are.

Trial Examiner Leff: It may or may not be immaterial. Go ahead with the examination. I overrule the objection.

Mr. Rosenfeld: Read the question.

(Question read by reporter.)

Q. (By Mr. Rosenfeld): Will you answer that, please? A. Yes, sir.

Mr. Rosenfeld: No more questions.

Mr. Ray: No further questions.

Trial Examiner Leff: When did you first begin to have your conversations with the third assistant on the subject of unions in 1944?

The Witness: In April.

Trial Examiner Leff: And where were those conversations usually held?

The Witness: The majority of conversations were held in our rooms.

Trial Examiner Leff: In your room when you expressed your position as to the rotary hiring system, did he also express his position?

The Witness: Yes.

Trial Examiner Leff: And in addition to those conversations in your room, did you ever have conversations with him in the mess hall or outside?

The Witness: Yes.

Trial Examiner Leff: I believe you testified you had at least three or four conversations with him while Vogt was present.

The Witness: That is right.

Trial Examiner Leff: Prior to October, did you ever have such conversations with the third assistant?

The Witness: Yes.

Trial Examiner Leff: While others were present?

Mr. Belkin: If the examiner please, he so testified.

Trial Examiner Leff: Please, I am conducting the examination.

The Witness: Yes.

Trial Examiner Leff: Did you have such conversations prior to the election?

The Witness: Yes.

Trial Examiner Leff: While other unlicensed personnel were present?

The Witness: Yes.

Trial Examiner Leff: Now, you knew the view of the third assistant on rotary hiring?

The Witness: Yes.

Trial Examiner Leff: And he knew your views?

The Witness: Yes.

Trial Examiner Leff: How did these public conversations arise? Why was it necessary to discuss them in public?

The Witness: Well, he would just mention it and I would agree with him.

Trial Examiner Leff: You had already agreed with him on that position before.

The Witness: Yes.

Trial Examiner Leff: Why did you think it necessary to discuss it with him after you had reached an agreement?

Mr. Ray: May I object? It seems to me that the trial examiner's question is not proper because the witness has testified that the conversations took place and the reasons back of the conversations, it seems to me, are not material.

Trial Examiner Leff: The question is withdrawn. Are there any further questions?

Mr. Belkin: I fail to see why you should withdraw it.

Trial Examiner Leff: I have the privilege.

Mr. Belkin: I will put the question then on re-cross.

Trial Examiner Leff: Go ahead.

Mr. Ray: The counsel for the union has already attempted to ask a question.

Mr. Rosenfeld: Just one question.

Trial Examiner Leff: Go ahead, Mr. Belkin.

RE-CROSS EXAMINATION.

Q. (By Mr. Belkin): Why did you find it necessary to discuss the question of rotary hiring and other union matters with the third assistant in the mess hall in April and May of 1944 after you had discussed it in your own room?

Mr. Ray: I object to that question for the reason that I stated.

Trial Examiner Leff: Overruled.

Q. (By Mr. Belkin): Will you please answer, Mr. Witness? A. It was just brought up and just answered.

Q. Who brought it up? A. I might have and he answered.

Q. And sometimes he brought it up and you answered? A. That is right.

Q. So, in other words, you two were bringing up that question in front of members of the unlicensed crew although you knew each other's opinions on that question. A. That is right.

Mr. Rosenfeld: I would like to ask a question, if you don't mind. I think it is my turn.

Mr. Ray: Is there any turn?

Trial Examiner Leff: I asked the questions after everybody had been finished with the witness. Ordinarily it would be Mr. Ray's turn after I finish but Mr. Ray apparently had no questions. It is Mr. Rosenfeld's turn, Mr. Rosenfeld follows Mr. Belkin.

Re-Cross Examination.

Q. (By Mr. Rosenfeld): Mr. Carr, did you ever see a pamphlet called "N.M.U. Fights Jim Crow"? A. Yes.

Q. Did you read it? A. Yes.

Q. Did you ever have occasion to discuss rotary hiring with Captain Lawless? A. Yes.

Q. Did he tell you what he thought rotary hiring was? A. No.

Q. Did you tell him what you thought rotary hiring was? A. No.

Q. What kind of a discussion did you have? A. He just mentioned the fact that it was one of their demands.

Q. Did he say anything more? A. No.

Q. No opinion one way or the other? A. No.

Q. What was the occasion on which he mentioned that problem? A. There was a sign coming up the river.

Q. Did he mention it once or more than once? A. He mentioned it more than once.

Q. What were the other occasions on which he mentioned it? A. In the spring when he told us what they wanted and what the union wanted.

Q. What did he say? A. He told us what some of their demands were. What they were after.

Q. You say he told us, what do you mean, who did he tell? A. Us three mates.

Q. All at one time? A. Yes.

Q. Did he call you together for that purpose? A. No.

Q. What were the other occasions on which he mentioned it? A. Coming up the river.

Q. You said that time. Any other occasions? A. No.

Q. (By Mr. Ray): Mr. Carr, at any time during your discussions with the third assistant engineer, did you or did you not discuss the rotary hiring system as it affected the unlicensed personnel on the vessel as distinguished from you as an officer? A. No.

Mr. Ray: That is all.

Trial Examiner Leff: There is one other point I wasn't entirely clear on in the course of your testimony. I believe you testified that in your discussions with the third assistant you indicated that you liked unions that were run right, is that correct?

The Witness: Yes, I said I was in favor of unions if they were run right.

Trial Examiner Leff: Did you indicate whether or not you thought the N.M.U. was run right?

The Witness: No.

Trial Examiner Leff: You said nothing at all about it?

The Witness: No.

Trial Examiner Leff: The rotary hiring system was not the only aspect of the N.M.U. campaign that you discussed?

The Witness: Yes.

Trial Examiner Leff: It was the only one?

The Witness: That is right.

Trial Examiner Leff: That is all.

Mr. Rosenfeld: You asked a question with respect to —just before the first question you asked—I was just asking to fix the time of the conversations with respect to when the discussions concerning rotary hiring as it affected you arose. I would like to fix the time of that conversation with respect to the Labor Board election.

Trial Examiner Leff: He stated that. No further questions. The witness is excused.

(Witness excused.)

Trial Examiner Leff: Off the record.

(Discussion off the record.)

Trial Examiner Leff: We will adjourn to 11:30 p.m. The time now is 10:40 p.m.

(Whereupon, at 10:40 p.m., the hearing was adjourned to 11:30 p.m. the same day.)

Trial Examiner Leff: The hearing is in order.

HAROLD J. BROTZ, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?

The Witness: Harold J. Brotz.

Trial Examiner Leff: Where do you live, Mr. Brotz?

The Witness: 3547 West 123d Street, Cleveland, Ohio.

DIRECT EXAMINATION.

Q. (By Mr. Hinslea): How old are you? A. Twenty-seven.

Q. What is your occupation? A. Third mate.

Q. Do you hold a license? A. I do.

Q. How long have you sailed? A. Since 1935.

Q. Now in the spring of 1944, were you employed on the steamer Morse? A. On the steamer Morse, yes.

Q. In what capacity? A. As third mate.

Q. How long were you on the steamer Morse, approximately? A. About a month.

Q. What period would that cover? A. From fit-out until the early part of May.

Q. That would be approximately from the latter part of March to the early part of May? A. That is right.

Q. What watch did you stand? A. Six to ten watch.

Q. Now, at any time while you were on the ship, what is the fact as to whether or not the captain gave you certain instructions as to the organization of the men on the ship, did he or did he not? A. He did.

Q. Tell me where he gave you those instructions? A. He called the officers to his room and told us that he had found out they were organizing and he said let them go as they were, he said leave them organize as they want.

Q. About when would you say that was? Not the dates, but what month and what part of the month, if you can remember. A. It must have been in April. We made about a trip, it would be the second trip or the last part of the first.

Q. That would be the early part of April? A. Yes, the early part of April.

Q. And he stated to you that you shouldn't interfere with those men? A. That is right.

Q. Did you follow these instructions? A. That is right.

Trial Examiner Leff: May we have the captain's name?

The Witness: Captain Gerlach.

Mr. Belkin: No questions.

Mr. Rosenfeld: No questions.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: Off the record.

(Discussion off the record.)

Trial Examiner Leff: On the record. The hearing is adjourned to Friday, August 31st, at noon, Hotel Duluth.

(Whereupon at 11:50 p.m., Wednesday, August 29, 1945, the hearing was adjourned until Friday noon, August 31, 1945.)

Hotel Duluth,
Duluth, Minnesota,
Friday, August 31, 1945.

The above entitled matter came on for hearing, pursuant to adjournment, at 12 noon.

(Appearances omitted.)

Trial Examiner Leff: The hearing is in order.

HUGH STANLEY McGUINNESS, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?

The Witness: Hugh Stanley McGuinness.

Trial Examiner Leff: Your address?

The Witness: I sail up and down the Buffalo. Make it Washington.

DIRECT EXAMINATION.

Q. (By Mr. Ray): Mr. McGuinness, what is your occupation? A. Marine fireman.

Q. How long have you sailed? A. Since 1922.

Q. How old are you? A. Fifty-seven.

Q. During the spring of 1944, state whether or not you were employed on the steamer Filbert? A. Yes.

Q. In what capacity were you employed? A. Fireman.

Q. And on what watch were you, do you recall? A. I believe from two to six in the morning.

Q Now, when did you get on the Filbert and when did you get off the Filbert? A. I got on the 11th of April.

Q. And when did you get off? A. The 12th of May.

Q. Now, did you know a fireman on board the Filbert by the name of Stanley Lee? A. Yes, he was one of the firemen. He was ship delegate for the union, that is how I took particular notice.

Q. During the little more than a month that you were on the Filbert—strike that. Did you have a partner on board the Filbert? A. Sure, it was a two-man job. Everybody had two men on the watch. Two men on a watch.

Q. What was your partner's name? A. Moore. We call him Pozy, but his last name is Moore.

Q. State whether or not you and Lee had any conversation during the time you were on the Filbert relative to either joining or not joining the N.M.U.?

Mr. Belkin: I object.

Trial Examiner Leff: How is that relevant?

Mr. Ray: It is preliminary, Mr. Examiner. You will recall that Lee testified that when the men got off this captain accused him of driving the men off and we want to show that these men got off for other reasons and this question is preliminary to that.

Mr. Belkin: Just a minute, before you make your decision, Mr. Examiner, I don't know at what counsel for the respondent is driving, but the reasons why these firemen left the ship are not material to the issues in this case. The only thing that is material at all in this connection is the conversation which the board alleges the captain may have had with Mr. Lee. If this witness is not going to testify about that conversation, I don't think he should testify as to this.

Trial Examiner Leff: Let me ask you this, Mr. Belkin. What significance do you attach to the conversation?

Mr. Belkin: To that particular conversation?

Trial Examiner Leff: To the conversation between this supervisor and Lee, testimony with respect to which you adduced as part of the board's case?

Mr. Belkin: None whatsoever. It only came in in testimony of the witness concerning what occurred aboard that ship and the board bases no 8 (1) on that.

Trial Examiner Leff: Well, does counsel for the board want the trial examiner and the board to consider that statement which was made to Lee concerning Lee driving men off the ship as part of the general pattern, or at least the background, of unfair labor practices. If the board states that it does not, I will sustain the objection. If the board wants it to be considered as part of the overall picture, then I think the respondent should be permitted to inquire into these facts.

Mr. Belkin: On that basis, I must withdraw my objection and permit testimony on it.

Trial Examiner Leff: Very well. Please proceed.

Q. (By Mr. Ray): Mr. McGuinness, it has been a long time since the question was asked, I will ask you again

whether during the time you were on the Filbert, did Lee have any conversation with you with respect to either joining or not joining the N.M.U.? A. Yes, he was after us all the time.

Q. What, if anything, did he say to you? A. He said that if we didn't join the union then, it would be our last chance, we would get in for monthly dues, we wouldn't have to pay commission first.

Q. Did he confine that to you or did he tell that to anyone else? A. To me and my partner.

Q. What was your reaction? A. I told him I didn't want to join the CIO.

Q. Now, going back to the time that you left the vessel, will you state the circumstances surrounding the time that you did leave the vessel? Just tell us what happened. A. Well, we went ashore in Cleveland.

Q. In Cleveland. Where was the vessel at that time? A. Lake front dock.

Q. Yes. A. We went ashore—

Mr. Rosenfeld: Who is "we"?

The Witness: Me and my partner. When we came back Lee was sitting down at the bottom of the ladder. Whatever remark he made to Pozy, I don't know, but Pozy was going to swing on him. I stopped him, I grabbed him otherwise there would have been a fight right there.

Q. What happened after that? A. Pozy said, "I am going to get off this ship."

Trial Examiner Leff: What was the remark?

The Witness: I didn't get it. I know I heard something when we come up the ladder. There was five or six of us. Whatever was said, Pozy got hot and I grabbed him.

Trial Examiner Leff: Do you know someone did say something?

The Witness: Either made remarks or tripped him when he was going up the ladder.

Trial Examiner Leff: You don't know what the remarks were?

The Witness: I was walking away. Whatever Scotty had done, I don't know, but it come pretty near being a fight.

Q. (By Mr. Ray): Scotty Lee? A. Yes.

Q. You said you went up to get your money. From whom? A. The captain.

Q. What, if any, conversation took place between you and the captain at the time you got the money? A. He asked what the trouble was. Pozy said, "I can't get along with Lee, he is bothering me all the time." We had had arguments all the time. We just quit when we went up the ladder there.

Q. What was his reason for quitting? A. He couldn't get along with Lee. Lee was bothering him.

Q. About what? A. About joining the CIO. He didn't want to join the CIO, neither did I. I belonged to the International Seamen's and think it is a better union.

Trial Examiner Leff: You said Lee was bothering you?

The Witness: He was at our heels all the time. He said, "This is your last chance to get in the union and after they get control of the lakes we would be out." I said I didn't care if I was out or not. He was bothering us all the time. We just quit when we went up the ladder. Fights make it tough for the next watch.

Trial Examiner Leff: Just a minute.

Q. (By Mr. Ray): How does it make it tough for the next watch? A. Steam fires are dirty, they lay down on the job, make it tough for the next fellow coming on watch. So as he come up the ladder this fellow said, "I am through."

Q. Mr. McGuinness, during the time you were on the Filbert, did you or did you not hear any officers, that is, mates or engineers, including the captain and chief engineer, did you hear any of these officers make any anti-union statements?

Mr. Rosenfeld: Objection.

Trial Examiner Leff: Sustain the objection.

Q. (By Mr. Ray): What, if anything, did you hear the officers say about the union? A. I never heard them say anything about the union.

Mr. Ray: That is all.

CROSS EXAMINATION.

Q. (By Mr. Belkin): Mr. McGuinness, you left the boat May 12th, did you not? A. Yes, sir.

Trial Examiner Leff: Are you with the Pittsburgh lines now?

The Witness: No, we ship on many ports.

Trial Examiner Leff: What boat are you sailing on now?

The Witness: I am not on any boat. I got off the boat.

Trial Examiner Leff: Got off what boat?

The Witness: The Finley.

Trial Examiner Leff: Who owns that boat?

The Witness: Stein Brothers boat.

Mr. Ray: The Kinsman Transit Company is the owner of the Finley.

Trial Examiner Leff: I see. Will you proceed.

Q. (By Mr. Belkin): Who hired you when you came aboard the Pittsburgh vessels? A. I was shipped out of the Lake Carriers' Hall in South Chicago.

Q. Now, after you left the ship, did you ship out on another vessel that season? A. Yes, I shipped on the Taylor right after that.

Trial Examiner Leff: Off the record.

(Discussion off the record.)

Q. (By Mr. Belkin): Where did Pozy go? A. He got disgusted and went to work in a war plant in Chicago.

Q. Why did he get disgusted? A. Somebody bothering him all the time, he couldn't get along so he went to work in a war plant.

Q. How long after he left the ship did he go to work in the war plant? A. The next time I seen him he was in a war plant, he has been there ever since. He was working there the last time I heard.

Q. How did you know Lee was the ship's delegate on board the ship? A. He let you know.

Q. He told everybody? A. It was not very long before he let you know he was a delegate.

Q. He talked to you about joining the union? A. Yes, he wanted me to get in the union now "or else you won't get in after they get control of the lakes."

Q. Was an election coming up? A. Yes.

Q. While you were on board the Filbert, did you see any letters from the president of the company, Mr. Ferbert, about the election? A. No.

Q. Did you see the pamphlet, "N.M.U. Fights Jim Crow"? A. I seen pamphlets around, never read them.

Q. How do you feel about the policy of the National Maritime Union of allowing negroes to join the union? A. I belonged to the S.I.U. for a long time. That is a more American union, that is the reason I like it better. I don't like the setup in the CIO.

Q. Did you ever get a chance to talk to anybody else about the question of negroes aboard the ship? A. I heard it brought up lots of times.

Q. Who brought it up? A. They said it was—I don't know—there were fellows arguing about it. I heard fellows talking about it. Hearsay, you know.

Mr. Ray: Talk slower because this lady has to get everything down you say.

Q. (By Mr. Belkin): Did you ever hear Lee talk about that? A. No, all he ever talked to us about was joining the union. He seemed to be crazy about getting me in it.

Trial Examiner Leff: What do you mean, "talk about that"?

Q. (By Mr. Belkin): Did you ever hear anybody talk about the issue of Jim Crow or negroes on board the boat? A. Never heard that on the boat. Heard that in a tavern in Chicago.

Q. You never heard anybody talk about that aboard the Filbert? A. No, nothing about that. Nothing on that boat about that.

Q. While you were on board the vessel, that is, the Filbert, did you see the pamphlet "N.M.U. fights Jim Crow"?

Mr. Ray: He has already answered that.

Trial Examiner Leff: I will permit the question again.

The Witness: I never read the pamphlets much anyhow.

Q. (By Mr. Belkin): Did you see that pamphlet? A. I seen the pamphlet, never paid no attention.

Q. Then you did see the pamphlet? A. I would see it laying around. There's always somebody throwing stuff in my bunk.

Trial Examiner Leff: The witness' answer was not clear before and is not clear now. When you refer to a pamphlet, are you referring to a specific pamphlet? When you say you saw a pamphlet, what pamphlet do you mean?

The Witness: The Pilot.

Trial Examiner Leff: Did you ever see a separate pamphlet, not the Pilot, which was headed "N.M.U. Fights Jim Crow"?

The Witness: I don't remember seeing any like that.

Q. (By Mr. Belkin): While you were on board the vessel, did you hear anyone discuss the rotary shipping list? A. No.

Q. Did Lee—strike that. Lee just talked to you about the union on many occasions? A. He bothered us—

Q. Did he talk to you?

Mr. Ray: Let him finish.

The Witness: I told him I didn't want to join. He didn't bother me so much as he bothered Pozy.

Trial Examiner Leff: How did he bother you, just by talking about the union?

The Witness: He would tell me to get in the union when there was an opportunity. After the election we would be out.

Trial Examiner Leff: Did he bother you any other way?

The Witness: Not much because I would stop him.

Trial Examiner Leff: What I am trying to get clear for the record is, do you say he bothered you only by talking about the N.M.U. or were there other ways in which he bothered you?

The Witness: He kicked about the room sometimes. Lot of times; I didn't pay attention. He had more arguments with my partner than me.

Q. (By Mr. Belkin): We are talking about you. A. I told him to lay off. I had enough to fire that boat.

Q. Yes, I understand, Mr. McGuinness. But what we are trying to do is get the facts. If you will just answer our questions, that is all we want. Will you please tell me if Mr. Lee did anything but talk to you about the union? A. What else could he talk about?

Q. Then he just talked to you, then you answered him sometimes and sometimes shut him up? A. I told him to lay off.

Q. Because he irritated you with his constant talk? A. Yes, it got on my nerves.

Q. So one day you reported it to the captain? A. Never said anything to the captain myself. My partner.

Q. Then you went up to the captain and got paid off? A. He just couldn't stand it all the time.

Q. And when the captain paid you off, you told him why you were quitting? A. He asked us why we were getting off.

Q. You told him it was Lee? A. Pozy told him what the trouble was and then we got our clothes and left.

Q. And the trouble was Lee had been talking to you and Pozy about the union? A. Yes.

Q. You never argued with Pozy? A. I never argued with the man, I never argued with anyone.

Q. You don't argue? A. I would have plenty reason to argue with Lee if I wanted to argue.

Q. Because of Lee's union stand? A. There were different arguments, too, on things outside the union. He tried to make it hard for the men when I was working on the boat.

Q. When you and Pozy came back to the boat, had you been drinking? A. We had a couple of drinks, naturally we had a few bottles of beer, I wasn't drunk.

Q. You don't generally drink? A. I drink, never get drunk.

Q. You know when to quit? A. I never get drunk.

Q. After you came back to Cleveland— A. I had no idea of quitting until at the ladder.

Q. That was the final straw? A. Pozy said, "Let's get off."

Q. Had Pozy been drinking with you? A. He could stand more than I could but he hadn't drunk no more than I did.

Q. Had you been drinking— A. Not more than average. You take a drink once in a while yourself, don't you?

Trial Examiner Leff: Mr. Belkin is not on the witness stand. I shall not require him to answer that question.

The Witness: I ain't immune, I take a drink once in a while, but I never get drunk.

Q. (By Mr. Belkin): Mr. McGuinness, what time did you leave the ship? A. We haven't got much time, we load in four, four and a half hours.

Q. So you could be gone four and a half hours before you came back? A. We took a bus up town, went to

Joyce's, he telephoned his wife, got around to phone, then he said, "Let's go back."

Q. I understand you left the boat, went to Joyce's, and were there about four hours? A. No, not four hours.

Q. How long? A. How could you be four hours, it takes half an hour to get on the bus, takes one and a half hours to get up and back, and we were back about three quarters of an hour before the boat was due to go out.

Q. In other words, you were gone about three and three quarters hours? A. I would say about two hours.

Q. Didn't you just tell us it generally took four to four and a half hours to load the boat? A. Yes.

Q. Did you not tell us you were— A. A fellow has got to wash and shave up before he goes to shore.

Q. I am asking you. A. I don't know, I went to the drug store—

Q. So it was probably more than three hours before you got back to the ship? A. You mean to say we were in the saloon three hours?

Q. I don't know. A. We wasn't. We had a few drinks, we were going to take in a show, we walked to the square, went to the drug store on the corner—

Q. In other words, you went to— A. He wanted to go to a telephone, and I had a bottle of beer.

Q. After these few drinks and walking around town, you got back to the ship? A. Yes.

Q. Then you decided you better quit? A. We didn't decide at all. I had no intention of quitting.

Q. After you talked to Lee you decided to quit? A. It wasn't me, it was my partner.

Q. Why did you decide to quit? A. If he was gone, I wasn't going to stand the abuse from that fellow.

Q. Alone? A. That is right.

Q. So that, in other words, Pozy had an argument with Mr. Lee, he decided to quit, then you decided to quit? A. I quit after he said, "Let's get off here, this boat is no place for us."

Mr. Belkin: I have nothing more.

Trial Examiner Leff: Let me ask you this. You were a fireman?

The Witness: Yes, sir.

Trial Examiner Leff: What watch?

The Witness: Two to six, I think. It is quite a while ago.

Trial Examiner Leff: What was Lee doing?

The Witness: He was a fireman.

Trial Examiner Leff: Was he on your watch?

The Witness: The watch ahead of us. I believe he was on the ten to two watch.

Trial Examiner Leff: At what time did you have contact with Lee?

The Witness: When we worked he would be sleeping. Seems he brought it up quite often.

Trial Examiner Leff: Did you ever have an argument with Lee?

The Witness: I told him I didn't like the CIO.

Trial Examiner Leff: How do you know Pozy had arguments with Lee?

The Witness: He told me.

Trial Examiner Leff: You knew only because he told you?

The Witness: They never argued when I was around. I said what was the argument about. He was always picking on him. Pozy said there was going to be trouble. I had to stop him at the ladder. I grabbed him and held him.

Trial Examiner Leff: You saw the argument at the ladder?

The Witness: I got up the ladder first, I walked away, and all of a sudden I heard them chewing the rag. Pozy was going to swing at him, I grabbed him and stopped him.

Trial Examiner Leff: With respect to the earlier arguments you referred to, you base your testimony on what Pozy had told you about them?

The Witness: Yes, he seemed to be after him to get the election. I have nothing against the union, I believe in unions, but I don't like the setup of the CIO. I think there are better people in the Seamen's.

Cross Examination.

Q. (By Mr. Rosenfeld): You say you were on the two to six watch? A. I believe it was, it was a year ago.

Q. As a matter of fact, Lee was on the two to six watch, wasn't he? A. It might have been the ten to two. I thought it was the two to six.

Q. If you were not on the two to six watch, what watch were you on? A. On the watch following Lee. Four on and eight off.

Q. Were you on the six to ten or ten to two? A. I thought it was the two to six, I don't think it was the ten to two. It was either the six to ten or two to six. I think it was two to six.

Q. You think it was that? A. I am pretty sure.

Q. Were you working together with Lee in the fire hall? A. No, working with my partner, Mr. Moore.

Q. So you were not on Lee's watch? A. No, we followed him.

Q. So if Lee was on the two to six watch, you weren't on the two to six watch? A. We certainly couldn't have been on the two to six if Lee was on the two to six watch because we followed him.

Q. You are not sure? A. I know we followed Lee.

Q. When you came aboard that day in Cleveland, what time of the day was it? What time of the evening? A. I believe we shipped out in the morning.

Q. What time? A. It must have been ten, eleven o'clock.

Q. In the morning? A. Come over to Chicago, when I got there he had a job for us.

Q. When you returned—

Trial Examiner Leff: Just a minute. I don't know whether the reporter is getting it. I always miss the latter part of your answer.

Mr. Ray: I suggest that if the reporter isn't getting it, she tell us.

Q. (By Mr. Rosenfeld): What time of the day did you come back to the ship in Cleveland on May 12th? A. I know it was evening, after six, probably.

Q. What time of the day did you leave the ship to go to shore? A. When the boat had docked.

Q. Which was what time? A. I don't exactly remember. I know it was evening, six or seven o'clock.

Q. When you came back? A. That is when we went.

Q. What time did you return? A. A couple hours later, the boats were out in four and a half hours.

Q. Was it ten o'clock? A. About ten o'clock.

Q. You got aboard by climbing a ladder? A. That is the only way we can get aboard.

Q. Fine. When you got to the head of the ladder, whom did you see? A. Scotty was sitting at the foot of the ladder and I think there was a young deck watch there. I hopped up—

Q. Was there anyone else there besides Scotty and the deck watch? A. Yes, four or five. They seemed to be jibing. Scotty said something, or whatever he done.

Q. Don't be in such a hurry, McGuinness, take it easy, we got to get everything you say. When you talk like this—

Mr. Ray: Will you let the trial examiner make the disciplinary remarks. If the witness has to be coached, I think it is the job of the trial examiner.

Trial Examiner Leff: Let us proceed.

The Witness: Whatever he done—

Q. (By Mr. Rosenfeld): I haven't asked you a question. Let me ask you the question. You got to the top of the ladder, you went on the rail to the ship, you went about your business, then you heard something as you were coming along? A. I got off the ladder. If he said anything, I didn't hear it, but wouldn't have paid attention anyhow.

Q. Please, McGuinness, let me ask the question. A. You asked a question—

Q. After you left this group of men, you heard something? A. I heard something and went back.

Q. You turned around? A. Yes.

Q. What did you see? A. Pozy was going to hit Lee.

Q. All right. Do you know who it was that spoke to Pozy? A. It must have been Lee.

Q. Do you know? A. I heard his voice.

Q. Did you hear any other voices? A. No.

Q. All the other men were silent? A. Yes.

Q You said these men were jibing when you came aboard. A. Pozy got back and was going to hit Lee.

Q. You heard these men talking among themselves? A. Nobody was talking whatever. Lee said something to Pozy, he got sore and was going to hit him.

Q. Before you came aboard, were these men talking among themselves? A. They must have been.

Q. You thought they were talking among themselves? A. They must have been talking among themselves, they were all together.

Q. You heard voices, is that right? A. I didn't pay attention, I didn't want to fall off the ladder. It was pretty high, I had to be careful.

Q. You heard voices, that is all I wanted to know. A. I didn't hear voices, they wasn't hollering or anything.

Q. So you didn't hear Scotty either? A. He sat close to Pozy.

Q. Who came aboard first? A. I did.

Q. Pozy wasn't there when you came on board? A. Sure, I waited for him to get up.

Q. But when you crossed the rail, Pozy was still at the foot of the ladder— A. When I got off the ladder—

Trial Examiner Leff: Wait a while, Mr. Witness, just a minute, take it easy, and calm down for a second. Now you wait until Mr. Rosenfeld finishes the question. After Mr. Rosenfeld has finished the question, pause for a second and answer the question directly. If he doesn't ask a question, don't say anything. You are here to answer questions. Wait for Mr. Rosenfeld. Will you proceed.

Q. (By Mr. Rosenfeld): When you got on the deck, Mr. McGuinness, when you first put your foot on the deck, Pozy was still either on the ladder or at the foot of the ladder? A. I was halfway up there, I thought everything was all right, and I started to walk away toward the galley where they have coffee.

Q. You stood there how long before you walked away? A. I looked over and seen him coming, he was coming all right, then I heard a commotion.

Q. While you were standing looking down, did anyone speak to you? A. Somebody said "hello," I didn't pay attention.

Q. The men were talking among themselves? A. Yes, four or five.

Q. Chewing the fat? A. They must have been, I didn't hear.

Q. Then you walked away? A. Yes.

Q. A second or two later you heard Pozy— A. I heard them arguing, when Pozy was going to swing.

Q. Whom did you hear arguing? A. I heard Pozy say something.

Q. To whom? A. To Lee.

Q. How do you know? A. When I turned around I seen them argue. I could just turn like this and seen them arguing.

Q. First you heard voices, then you turned around and saw Pozy and Lee arguing? A. Yes, there was an argument between the two.

Q. What were they talking about? A. I told you I didn't know what the argument was about.

Trial Examiner Leff: Mr. Rosenfeld, haven't we had this?

The Witness: I don't know whether he tripped him or—

Mr. Rosenfeld: Wait a minute, McGuinness.

Trial Examiner Leff: There is no question.

Mr. Ray: Pay attention to the trial examiner, McGuinness.

Q. (By Mr. Rosenfeld): Now, you say that when you came to the ship, the ship was pretty high in the water? A. The ladder was high.

Q. What kind of a ladder was it? A. A straight ladder. You walk right up, you got to be careful, you are liable to fall off.

Q. You were a little bit worried about your ability to climb the ladder? A. No.

Q. Were you worried about Pozy being able to climb the ladder? A. He was pretty clever himself.

Q. Why did you look down to see if everything was all right? A. I looked to see if he was coming.

Q. You were a little bit worried about whether he could make it? A. No.

Q. You did look down before you walked away. A. I seen him climbing over but whatever happened between him and Lee, I don't know.

Q. You both felt good, you had been drinking? A. I always feel good, I don't have to take a drink to feel good.

Q. Drink doesn't do you any harm? A. Don't think I am a dope fiend just because I take a drink. I don't need a drink to make me feel good.

Q. If you think I was suggesting you are a dope fiend, I beg your pardon. It was no intention of mine to accuse you of being a dope fiend. A. We only had a

couple drinks, two or three bottles of beer was all I had, if I had that much.

Q. Pozy had a little trouble with the other men aboard the ship? A. No, never, only with Lee.

Q. Lee was the only man he had arguments with on the ship? A. Never had a chance to argue with anybody else.

Q. You testified earlier that after you and Pozy left the Filbert, Pozy told you, "Well, they are always picking on me, I am not going to sail again." A. He told me, "They got me disgusted on that ship. I am going to quit sailing." He got this job in the war plant and stayed there.

Q. Because of Lee, you say, Pozy left the lakes altogether? A. I don't know. He got another job, it was easy to find another job.

Q. Did he tell you that because of Lee— A. He told me he was disgusted with that boat.

Q. For that reason Pozy gave up going to sea altogether? A. That might have been the reason, I don't know.

Q. And he never had any kind of difficulty with anybody else? A. Never had any trouble except he had trouble with Lee a couple of times.

Q. Did you have trouble with anyone else? A. No.

Q. Only with Lee? A. Never had trouble with Lee.

Q. You never had trouble with Lee? A. Only had arguments with him.

Q. It is quite common on board a ship to have arguments with fellow crew members? A. I never seen any arguments.

Q. Never saw any arguments? A. I don't make it a practice.

Q. You don't like to argue? A. No.

Q. And Pozy doesn't like to argue? A. I never seen him argue with anyone, he is hot-headed, but pretty sensible.

Q. Now, after you left the Filbert in May, did you go on board another ship? A. Yes, I waited a while and then took another boat out.

Q. What boat was that? A. Marvin C. Taylor.

Q. How long were you on that boat? A. About two months.

Trial Examiner Leff: Is that a Pittsburgh ship?

The Witness: Yes.

Q. (By Mr. Rosenfeld): After you left the Taylor, did you go aboard another ship? A. I got off, I was sick, was supposed to go to the hospital, was supposed to have an operation, I didn't get it yet. I am going to get it now, I think.

Q. You never did join the CIO, the N. M. U.? A. As far as joining the CIO, I got nothing against any union.

Q. But you didn't join them? A. No.

Mr. Ray: No further questions.

Trial Examiner Leff: When did Lee talk to you about the CIO?

The Witness: We wasn't on the ship very long before he started telling us to get into the union.

Trial Examiner Leff: Where did he see you?

The Witness: In the firemen's room.

Trial Examiner Leff: Where were you when Lee spoke to you?

The Witness: When we heat the boat we gathered in the room. We don't have to keep up the steam. One man stands watch, one goes up to the room.

Trial Examiner Leff: Is it common for the firemen to have general conversations at that time?

The Witness: They chew the rag.

Trial Examiner Leff: There is no rule against it?

The Witness: No, they can talk to each other on the boat.

Trial Examiner Leff: All right. Any further questions?

The witness is excused.

(Witness excused.)

Mr. Ray: That is all for the time being.

Trial Examiner Leff: Off the record.

(Discussion off the record.)

Mr. Ray: We ask for an adjournment until 2:30 a. m. tomorrow.

Trial Examiner Leff: The hearing is adjourned to 2:30 a. m. tomorrow morning at the same place.

(Whereupon at 1:15 the hearing was adjourned until 2:30 a. m., Saturday, September 1, 1945.)

Hotel Duluth
Duluth, Minnesota
Saturday, September 1, 1945

The above entitled matter came on for hearing, pursuant to adjournment, at 2:30 A. M.

(Appearances omitted.)

Trial Examiner Leff: The hearing is in order.

GABRIEL A. LEHNE, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?

The Witness: Gabriel A. Lehne.

Trial Examiner Leff: What is your address?

The Witness: 4845 Pensicola Avenue, Chicago, Illinois.

DIRECT EXAMINATION.

Q. (By Mr. Ray): What is your occupation? A. Master on the Pittsburgh Steamship.

Q. Master of what vessel at the present time? A. Thomas F. Cole.

Q. Thomas F. Cole? A. That is right.

Q. And in 1944, the navigation season of 1944, of which vessel were you master? A. Peter A. B. Widener.

Q. What licenses do you hold? A. Master and first class pilot of the Great Lakes.

Q. How long have you had that license? A. That license I got in 1923, the master's license, and first class pilot in 1919.

Q. How long have you sailed? A. Since 1907, 20th of May, 1907.

Q. How old are you? A. Fifty-four.

Q. Captain, during the sailing season of 1944, while you were master of the Widener, did you have a deck watch on that vessel by the name of Babin? A. I did.

Q. Now, captain, Mr. Babin has testified in this case that you told him that the company does not want any union men aboard their ships. I will ask you whether or not you at any time told Mr. Babin—made that statement to Mr. Babin? A. Positively not.

Q. Now, captain, what, if any, orders have you received from officials of your company with respect to the hiring or discharging of men? A. None whatsoever. I had the privilege to use my own judgment.

Q. Mr. Babin has already testified that while he was serving as a deck watch on the Peter A. B. Widener that you told him that he was not to talk unionism to the men on your vessel. Will you state whether or not any such statement was ever made by you to Mr. Babin? A. It was never made, never.

Q. Did you or did you not have any conversation or conversations with Mr. Babin with respect to him carrying on his organizing work? A. Yes, I did.

Q. Will you kindly state the substance of those conversations? A. There was several cases where deckhands come up and wanted to quit and we couldn't get deckhands, it was hard to get labor. I asked Babin—and they told me Babin was an organizer and they didn't want to join the union, and he would not leave them alone while they were working. It did not make any difference where they were, he was bothering them all the time.

Q. After these men quit, as you just testified, what, if anything, did you say to Babin? A. That was several trips that went on and one day I called Babin up to my room.

Q. In your room? A. Yes.

Q. What did you tell him? A. I told him, "you can organize all you want to, but you got no business to chase them off. Give them a chance to rest."

Q. Now, did you have any further conversations regarding unionism or Babin's organizing activities? A. I told him it was the understanding that he had the privilege of organizing but not to chase them off, that he should give them a chance to rest and to do the work.

Mr. Ray: Now, Mr. Belkin, does the board contend that the exclusion of Babin from the engine room by the chief engineer constituted an unfair labor practice?

Mr. Belkin: Well, I think the board—do you want me to answer that, Mr. Leff?

Trial Examiner Leff: If you want to.

Mr. Belkin: I would say this, that the board contends that that incident, coupled with the conversation at the

time, is part of the plan—course of conduct pursued by the company in respect to this union and the forthcoming election.

Mr. Ray: The reason for my question is, if the board does so contend, it would have a bearing on subsequent testimony. That is the purpose of it.

Trial Examiner Leff: All right. Will you proceed.

Q. (By Mr. Ray): Captain, where is the board upon which the soundings were marked located? A. Upon the peer of the Peter A. B. Widener. One in the pilot house, one in the fantail.

Q. Where is the one located aft? A. That is located in the fantail on the foreside of the firemen's room.

Q. Where is the fantail with respect to the engine room? A. That is about fourteen or sixteen feet above the engine room, and farther back. The only reason we had it there was so the engineer could stand in that room and see the soundings when it was marked up.

Q. Captain, state whether or not it is necessary for a man to go into the engine room to mark—to put any markings or soundings on the sounding board? A. Positively not. It is outside the engine room altogether.

Q. Captain, Mr. Babin has testified that it was necessary on the Peter A. B. Widener for him to go into the engine room to advise the engineers, to instruct the engineers rather, to start the pumps when it was necessary to put water into the ballast tanks and to instruct the engineers when to shut off the pumps. Now, will you kindly tell us what the practice was on the Peter A. B. Widener with respect to the starting and stopping of the ballast pumps. A. To begin with, I tell the mate. It isn't much to pump the water out when they got water in there. We run it in when we want it in—when it is necessary, in other words. Then the mate calls the engine room on the telephone and tells him what tanks to put the water in, or take it out, whatever the case may be. The mate goes for the deck watch, and tells them to watch the water and the tanks the water is going in or coming out of, and chances are he tells them forty or fifty inches. If pumping out, it don't make any difference. Then the deck watch notifies the mate when the amount of water that it is decided to have in the tank. The mate then calls the engine room to shut the

water off and that is the way it is being done on all ships I have been on.

Q. That was the way it was done on the Widener? A. Yes, sir.

Q. In view of the testimony you have just given, state whether or not it was ever necessary for Babin to go into the engine room to either shut off the water or turn it on? A. The deck watches never instruct the engineers what to do about the water. That is being done by the mate on watch. All that he has to do is to mark the soundings down on the sounding board in the pilot house and in the fantail.

Q. You stated that your conversations concerning organizing was confined to the one conversation that you had with Babin in which you told him that he was bothering the men and driving them off the ship. I will ask you whether or not you had any other contacts with Babin relative to his own work? A. No, that was up to the mates.

Q. Now, captain, what, if any, effect did the quitting of these men—did the fact that these men were quitting due to Babin's activities have upon the operation of the ship?

Mr. Belkin: Objection.

Mr. Rosenfeld: Objection.

Trial Examiner Leff: Objection sustained because of the form of the question.

Q. (By Mr. Ray): What was the effect of the men quitting?

Mr. Belkin: Objection.

Mr. Rosenfeld: Objection.

Trial Examiner Leff: On the operation of the ship.

Mr. Belkin: Just a minute, if the examiner please, is the respondent contending that Babin was guilty of unfair labor practice?

Trial Examiner Leff: No, he is contending that it was reasonable for the captain under the circumstances to speak to Babin as he did. Is that right?

Mr. Ray: That is correct. Will you read the question?

(Question read by reporter.)

The Witness: The effect was it was not possible to operate the ship properly.

Q. (By Mr. Ray): Why not? A. We were short-handed.

Mr. Ray: That is all. Now these gentlemen will ask you questions.

CROSS EXAMINATION.

Q. (By Mr. Belkin): Captain, you said you talked to Babin just once? A. I talked to him lots of times.

Q. About this? A. That is right.

Q. Did anybody else quit? A. Yes, they kept on quitting every day, but wouldn't say they quit on that account. When I saw the way things were going, I let them go ahead.

Q. In other words, men quit all during the voyages on your ship? A. They do today, in fact.

Q. But you feel that in the spring of 1944 they were quitting because Babin talked to them? A. Yes.

Q. How many of these men quit in 1944,— A. I couldn't tell.

Q. Let me finish the question. Because Babin talked to them about the union. A. Quite a few.

Q. How many would you say? A. I wouldn't try to estimate that at all.

Q. Was it ten? A. When a man gets off I want to know the reason and I asked these boys and that is the reason they gave me, they couldn't get rest or anything else.

Q. Do you recall telling Babin to stop talking to those men and disturbing them? A. No, I did not. I told him to give them a chance to rest.

Q. You told him to give them a chance to rest. Don't you remember any of the men who quit because they weren't given a chance to rest? A. No, I do not.

Q. Not a single man? A. They don't stay on long enough for me to get acquainted with any of them. Just as they came on board he got at them.

Q. Do you know them after they have been aboard for a while? A. I don't bother with the men, the mates take care of the men. That is the least of my worries, what the name is.

Q. So you want us to believe that several men came to you in the spring of 1944 and told you that Babin was

bothering them, trying to sign them in the union and they were so disturbed they had to quit? A. Yes.

Q. And you don't remember their names? A. No, I don't.

Q. And you don't remember how many? A. No, I do not. You can believe that or you don't have to, but that is the case. I tell you the way it is. You take a man for the ship, he comes aboard and chances are he is aboard a day or two before I see him.

Trial Examiner Leff: Don't you hire the men?

The Witness: No, I do not.

Trial Examiner Leff: And do you pay them off when they quit?

The Witness: No, the mate pays them off.

Trial Examiner Leff: So the mate could have contact with the men?

The Witness: Yes, with the exception of the wheelsmen and watchmen,

Trial Examiner Leff: Did the wheelsman or watchman quit?

The Witness: No, they didn't. But that is the way, the wheelsmen and watchmen stayed pretty good.

Trial Examiner Leff: Would it not be usual for the men who quit to state their reason to the mate and not to you?

The Witness: Well, I make it my business to find out the reason.

Trial Examiner Leff: From the mate?

The Witness: From the men. I saw there was something radically wrong and called the men up to one side, I said, "Why don't you make another trip?" I did everything I could think of to get them to stay. I stated that we couldn't get men, I tried to talk them into staying and making another trip and they said the reason why they wanted to get off was because they wanted to have peace.

Q. Captain, do you still keep your custom of inquiring the reasons for quitting when a man quits now? A. I do.

Q. And you kept that up this year and last year? A. Once in a while you got a man who don't care, who don't live up to doing his duty or try to. I don't bother with him.

Q. Now, how many men have quit your ship in the last month? A. That is another thing I could not tell you.

Q. How many men did you talk to about quitting? A. There is one now I talked to about quitting.

Q. He is the only one? A. The only one I know of today.

Q. Why is he quitting? A. The reason is that he wants to go home.

Q. How many men did you talk to the rest of the season? A. I talked to quite a few.

Q. What were their reasons, do you remember? A. They had several reasons. Some wanted to go home for a rest, some for vacation, some of them didn't like it, some wanted to loaf for a while and so forth.

Q. Directing your attention to 1944, after, let's say, June 10, 1944, to the close of the shipping season, how many of your men quit? A. What do you mean June 10th?

Q. I am just picking that date. A. I see.

Q. Say from that time until the time you lay your ship up, how many men quit? A. I would have to look the records up.

Q. To the best of your recollection? A. I imagine about—that is something I wouldn't guess at.

Q. Was it twenty men? A. I am sure that it was twenty men.

Q. Was it more? A. I think it was more.

Q. How many of these men did you talk to about the reasons for their quitting? A. I talked to practically all of them forward end. I didn't bother about the aft end.

Q. What were their reasons for quitting? A. Several reasons.

Q. Much the same as the others who quit this year? A. Not all of them.

Q. What was the difference? A. If a man got a mind of his own he got a reason for quitting of his own.

Q. Now, before June 10, 1944, how many men quit who— A. That is over a year ago, I couldn't answer.

Q. How many would you say? A. I wouldn't say.

Q. Was it less or more than ten? A. Ten or more.

Q. Not less? A. I couldn't tell you.

Q. All these men quit for one reason? A. Several reasons. I don't say one.

Q. I understood from your testimony that these men quit because Mr. Babin— A. Then you misunderstood. I mentioned these deckhands I talked to.

Q. How many deckhands did you talk to? A. Quite a few.

Q. Were there any other men who quit for other reasons that Babin talked to? A. Yes.

Q. How many? A. I couldn't tell you that.

Q. But your testimony is that men quit in the period before June 10, 1944, for a variety of reasons but some of them quit because Babin talked to them on behalf of the National Maritime Union. A. That wasn't it. He was bothering them so they couldn't get any rest, that was the reason. They didn't have a chance to rest.

Q. You instructed Babin he was not to talk to those men while they were off watch? A. No, I did not. I instructed him to give them a chance to sleep. I said, "You can organize, it is legal, it is your privilege, but not drive them out of the ship, not bother them so they can't rest or sleep."

Q. Did you find Babin talking to these men while on watch? A. Yes.

Q. Did you yourself see him? A. Yes.

Q. Did you hear what he was saying? A. No, I never did.

Q. Do you know whether he was talking about the union or not? A. I will tell you if you want me to explain.

Q. Wait a minute, I want you to answer my question. Now, I asked you whether or not you heard Mr. Babin talking about the union to these men on watch. A. I did not.

Q. You did not? A. I did not. Now, can I explain something to you?

Trial Examiner Leff: Go ahead.

The Witness: That was this, I seen them on deck. He got them in a corner, then he just kept on talking to them. They couldn't move or walk or anything else, but what he was saying I couldn't tell you, but they told me that was what he was talking about. The same thing if they were reading a magazine or paper in the bunk room, he was there bothering them all the time.

Q. (By Mr. Belkin) Now, Mr. Lehne— A. Captain Lehne, if you please.

Q. Did you ever find anyone else in your crew talking to the men on watch besides Babin? A. They always talked to them on watch. There is no rules about not talking to anyone on watch.

Q. No rules? A. Positively not.

Trial Examiner Leff: Let me get this straight. Is it your testimony that there are no rules about talking on watch?

The Witness: Just like any place else, they talk while they are on watch.

Q. (By Mr. Belkin) Now, captain, you said you had one conversation with Mr. Babin on this particular subject; and isn't it true, as a matter of fact, you spoke to Babin in April, you spoke to him two weeks thereafter, and you even spoke to him on a third occasion, at each time in your room? A. No, it was only one time that I called him in the room.

Q. That is all you remember? A. I know it to be a fact, only once that I called him in the room. Never spoke to him on deck.

Q. Yet you testified, captain, that he continued to talk to the men about the union all during this time up until the election, isn't that right? A. Yes.

Q. But you only spoke to him early in April? A. I couldn't tell you whether it was early in April or when.

Q. But it was the first month you shipped out? A. That is right.

Q. So it must have been in April? A. That is right.

Q. After that you did not talk to him? A. That is right.

Q. You let him go ahead? A. That is right.

Q. Even if the men were still quitting? A. That is right.

Q. When was the election held on board the ship? A. June, wasn't it? I can't remember.

Q. It was in June? A. The early part of the season.

Q. Did you at any time prior to the election see any letters from Mr. Ferbert, the president of the company? A. Yes, I did.

Q. Did they come to you? A. Yes.

Q. What did you do with them? A. I read them.

Q. After you read them? A. I throwed them in the waste paper basket.

Trial Examiner Leff: You are talking about letters with reference to the union?

The Witness: The only letter we got with reference to the union, I don't know when we got it, about that there was going to be ballots to put up on the bulletin board, one forward and one aft. I think it was two, if I remember right. Then there was another one that we was to leave them alone, something to that effect, that it was perfectly all right for them to organize.

Q. You say you got a letter from Mr. Ferbert saying it was all right to organize? A. Something to that effect. That wasn't word for word. That was their privilege to organize and that we don't interfere with them, or something to that effect.

Q. Do you have such a letter? A. No, I have not.

Q. Do you know what happened to it? A. Yes.

Q. What did you do with it? A. Throwed it in the waste paper basket.

Q. And do you always throw communications from the president of the company in the waste paper basket? A. Not anything that amounts to anything, that we want to refer to.

Q. But a letter involving the matter of union organization was the kind of a thing that did not amount to anything? A. That I kept till after the election, then I cleaned it out. It was something that was a thing of the past, I see no point in keeping.

Trial Examiner Leff: May I inquire at this point whether the respondent intends to produce the letter.

Mr. Hinslea: I don't understand there was such a letter. He is talking about his interpretation of the letter. He said, "words to that effect."

Q. (By Mr. Belkin) Captain, you know, as a matter of fact, that the N. M. U. has continued its campaign to organize men aboard the Pittsburgh Steamship vessels, don't you? A. Yes.

Q. And you still threw away this letter? A. I did. That is what I told you in the first place.

Trial Examiner Leff: Off the record.

(Discussion off the record.)

Trial Examiner Leff: On the record.

Q. (By Mr. Belkin) I want to direct your attention to what has been marked Board's Exhibit 3. A. Well, what about it?

Q. Did you ever see that? A. No, personally, I don't think I did.

Trial Examiner Leff: Let me ask you, is that the letter you had in mind when you referred to a letter of instructions?

The Witness: No, it isn't, that isn't the one I had in mind, that was a different letter altogether.

Q. (By Mr. Belkin) I want you to examine what has been marked as Board's Exhibit— A. I never received that letter.

Q. Board's Exhibit 2 and ask you if you have seen this letter? A. I wouldn't say that I had. I don't think that was sent the captain's way.

Trial Examiner Leff: Is that the letter you had in mind?

The Witness: No, that wasn't what I had in mind. The one I had in mind was a short one, just about one third of that.

Q. (By Mr. Belkin) Now, I hand you what has been marked as Board's Exhibit 4 and ask you if you have seen that. A. No, I never seen that.

Q. Have you ever seen that aboard the ship? A. That one there? I seen that aboard the ship. I got one of those.

Q. You got one of those? A. Yes.

Q. From whom? A. Through the mail.

Q. Do you know from whom it came? A. It came from Congressman Bradley, or Senator Bradley, whatever he was.

Q. Do you recall, then, that the envelope in which this letter came had Mr. Bradley's name on it? A. It seems to me it did, I won't say for sure.

Trial Examiner Leff: Let me ask you this. When you got that Exhibit 4, that is the printed speech of Congressman Bradley, you received it in an envelope, did you not?

The Witness: It was a whole batch, if I am not mistaken, one for each man on the ship.

Trial Examiner Leff: You said it had Congressman Bradley's name on the outside, am I correct in that?

The Witness: I know it was—I didn't pay attention—but I connected the name with the Bradley people in Calcite. How it was marked, I am not able to tell you.

Trial Examiner Leff: I understood you to say before that you received it in a cover or envelope with Congressman Bradley's name on the envelope or cover.

The Witness: Yes, it came in like that.

Trial Examiner Leff: Did it come addressed to you?

The Witness: Yes, to the master of the steamship Peter A. B. Widener.

Trial Examiner Leff: Was your name on the envelope?

The Witness: Must have been. I know the mate, and second and third mate, all got one.

Trial Examiner Leff: How was it addressed, by title or by name?

The Witness: I wouldn't say for sure. It seems to me it was addressed by title.

Trial Examiner Leff: Just by title?

The Witness: Yes. My name might have been on but I couldn't tell you.

Trial Examiner Leff: What was that batch of printed speeches that you referred to? What were you talking about then?

The Witness: That was the pamphlet I was talking about.

Trial Examiner Leff: Did you not say something before about receiving a batch?

The Witness: That was what I was referring to.

Trial Examiner Leff: Well, what did you mean by a batch?

The Witness: That was when there was one for every man, that is what I called it. That may not be the proper expression.

Q. (By Mr. Belkin) Did each one come under a separate cover? A. That is right, they all were separate.

Q. How did you know that Bradley's speech was in each envelope? A. Because the mates were telling me they got the same thing.

Trial Examiner Leff: What I was trying to find out when Mr. Belkin interrupted me was, when these speeches came in, you say there was one for each man aboard the ship?

The Witness: For each licensed man anyhow.

Trial Examiner Leff: Do you know whether they were addressed by name?

The Witness: I told you I am sorry I couldn't tell you that but there was one for each licensed man anyhow.

Q. (By Mr. Belkin) Did these letters bear on their cover the name of Mr. Bradley as the man who was sending the letter? A. No, his name was there, whoever made the speech, it was stated it was Mr. Bradley.

Q. I understand that, but on the letter you received, was there any return address? A. Just by recollection, when you get a letter a year ago, if I ask you what was on the envelope, could you tell me? Except it was something special, and we got them every day, get them from the office, different companies, to be frank I couldn't tell you.

Q. But it was your first recollection that it had. A. Because I read it but whether it was on the outside of it or on the pamphlet, I couldn't tell you. I am sorry but that is the case.

Q. Did you at any time see the pamphlet "N.M.U. fights Jim Crow" aboard your ship? A. Yes, sir.

Q. Did you get a copy of that pamphlet? A. Yes, I did.

Q. How did you get it? A. I got it through the mail.

Q. How was it addressed to you? A. It was addressed to the master of the steamer Peter A. B. Widener; first mate, steamer Peter A. B. Widener; third mate and so forth; and one for each crew.

Trial Examiner Leff: The bundle came in one packet?

The Witness: In separate packets but they were tied. Awful bulky affair because there was one for each man.

Q. (By Mr. Belkin) Who distributed those pamphlets to the crew? A. The mate that was on watch. He sorts the mail then he brings the mail up in my room what belongs to me, and the mail that goes to the aft men that is taken down and given to the chief engineer in the engine room, and the forward mail—I get my mail—and the for-

ward mail we got a mail box, just a box hanging on the wall, and all the mail for the wheelsmen, deckmen, watchmen, is put in this box, then when they get up, as a rule they come up and go to this box.

Q. It isn't usual then for the mate to pick up the mail and distribute it personally to each member. A. No, positively not.

Q. Was a man named Victor Teich on board your ship, too? A. That is right.

Q. Did you at any time have the opportunity to talk to him about the union? A. I never did. He was a different type of a man.

Trial Examiner Leff: What do you mean by that?

The Witness: Why, he didn't bother anybody to death.

Q. (By Mr. Belkin): Now, I want to direct your attention to your testimony about the soundings. As I understand it, it was the duty of the deck watch to check the height in inches of the water in each of the ballast tanks as the mate was either emptying them or filling them? A. That is right.

Q. And there were two sounding boards on which you marked the number of inches of water in each tank? A. That is right.

Q. There was one in the engine room? A. No, there wasn't one in the engine room, one in the fantail.

Q. In the fantail and in the pilot house? A. That is right.

Q. The fantail sounding board is fifteen feet above the engine room? A. It is a deck below the fantail.

Q. What is a deck below the fantail? A. The engine room.

Trial Examiner Leff: Is that below?

The Witness: A story below. The sounding board isn't located in the engine room, the engine room is below the fantail.

Q. (By Mr. Belkin): But it was the duty of the deck watch to mark the soundings on the sounding boards. Now, if the deck watch found that the soundings were not what they should be, it was his duty to notify the mate or engineer, as the case might be? A. The mate. It was his duty to notify the mate.

Q. Just the mate? A. That is right.

Q. If the deck watch went into the engine room in the course of his stay aboard the ship, was that a violation of orders? A. Not necessarily.

Q. The men could pass freely from one room in the ship to another? A. Yes.

Q. If you found an aft end man, that is, one of the engineer's crew, up forward, as long as he wasn't disturbing anyone, would you order him out? A. No.

Q. Was it the custom of the chief engineer to order deck-hands out of the engine room if they weren't interfering with the work? A. More or less they were because there is machinery going around there and it is no place for anyone to visit in the engine room.

Q. If a man stood inside the engine room door, would he be in the way of the machinery? A. What do you mean, inside the door?

Q. Three or four feet beyond the doorway. A. Let me explain this. When you go inside the engine room, in order to get in the engine room, you got to go down a stairway, twelve to fourteen feet. I couldn't tell you exactly, but that is as close as I can come to it.

Q. Having walked twelve or fourteen feet, you wouldn't be in the way of the machinery? A. You would be in the way of the people who worked down there.

Q. How far are you away from the engineer if you are at the foot of the ladder? A. There is a grade in there, I would say about three or four feet.

Q. Three feet away from the engine? A. Yes, three to four feet, might be a little more, but it isn't five feet.

Q. Were you familiar with the fact that the chief engineer had ordered Babin out of the engine room? A. No.

Q. Never heard of that? A. No, that is none of my business. I have all I can do to take care of the forward deck without bothering the engineer.

Q. Did any of the mates at any time discuss with you the fact that Babin had had difficulties with the engineer? A. No, sir.

Q. It was the duty of the mate to report these matters to you, wasn't it? A. No, the mate don't ask and find out what the engineers are doing.

Q. I didn't ask you that. I asked you if the mates had reported to you any difficulty concerning Babin and the chief engineer? A. No.

Q. But they should report the difficulties of the crew? A. Of the forward crew.

Q. If any of the forward crew get into difficulty with the aft crew, the mates report that? A. No, they keep that amongst themselves. They don't want to report that to any of the officers, they don't do that.

Q. So it is your testimony that outside the fact that certain individuals came to you in the spring of 1944 and said that they were being bothered by Babin attempting to persuade them to join the union that you knew nothing else about Babin's activities? A. No, I never bothered with it. No, sir, I did not.

Q. And that these men kept coming to you in May and June of 1944—

Mr. Ray: If the trial examiner please—pardon me, have you finished?

Q. (By Mr. Belkin): In May and June of 1944, after your first conversation with Babin, and kept telling you that they were quitting because of Babin's attempting to persuade them to join the union and you still didn't talk to Babin?

Mr. Ray: I object, if the examiner please, this is at least the fourth time he has asked this question. It is repetition. I don't believe it is necessary to cumber the record.

Trial Examiner Leff: Overruled. He may answer.

The Witness: I did not. As I explained to you before, I only had him up in the room once.

Q. (By Mr. Belkin): In April. A. No, I couldn't tell you whether it was in April or May.

Q. You testified it was during the first month of your sailing and you testified it was in April. A. That is to the best of my knowledge.

Q. You don't want to change that? A. No, I do not, but the date, the time it was, I couldn't tell you.

Trial Examiner Leff: While Mr. Belkin is pausing, I just want to ask one question, I want it for my information. How many people are there aboard the ship?

The Witness: Thirty-six.

Trial Examiner Leff: Thirty-six. How many unlicensed personnel?

The Witness: There is twenty-eight.

Trial Examiner Leff: Twenty-eight unlicensed and eight licensed?

The Witness: That is right.

Trial Examiner Leff: Is that exclusive of the captain?

The Witness: No, with the captain.

Trial Examiner Leff: To clarify the record, maybe Mr. Ray can tell me. Is that the normal complement on board all the respondent's vessels?

Mr. Ray: The captain can tell you.

The Witness: Some of them have stokers and they carry three men less.

Mr. Belkin: I have nothing more.

Mr. Rosenfeld: I have a few questions.

CROSS EXAMINATION.

Q. (By Mr. Rosenfeld): Captain, is the reason why the deck watch puts markings on a board aft so the engineers can readily see it? A. That is right.

Q. You say that the board is from twelve to fourteen feet above the engine room? A. Yes.

Q. How does the engineer get to see it? A. Well, there is a door there, like you have it on the wall there and the engine room is down here and the door is—

Trial Examiner Leff: Just a minute, before you go on, we are copying what you say. This record will have to be read by other people. When you point, that won't be shown. Try to express it in words. Start your answer all over. Do you remember the question?

The Witness: Yes, sir. The sounding board can be seen from the engine room—

Q. (By Mr. Rosenfeld): Well, do the engineers have to come up? A. No.

Q. How do they see it? A. They just look at it.

Q. But you say the engine room is twelve to fourteen feet below the board. A. That is right.

Q. Can they see it from the engine room itself? A. They just look at it, like you would look at the picture up there, or anything else.

Q. The engine room is twelve or fourteen feet below the board? A. That is right.

Q. So a man could look straight up and see the board? A. Don't have to look straight up.

Q. Isn't it above his head? A. That is right.

Q. Twelve or fourteen feet? A. That is right.

Q. Is there— A. Pardon me, it wouldn't be twelve or fourteen feet above his head when he is standing up.

Q. Twelve or fourteen feet above the floor plates? A. That is right.

Q. Now, the entrance to the engine room is in the deck house. How could you get into the engine room from the deck house? A. You go down to the fantail. There is a door leading down to the fantail, it is the last door on the port corner, off the aft cabin.

Trial Examiner Leff: Will somebody please explain to a trial examiner who has spent his life on shore, what the fantail is?

The Witness: It is the room where the steering gear is located.

Trial Examiner Leff: In the fore part of the ship?

Mr. Hinslea: It is the extreme aft end of the ship.

Q. (By Mr. Rosenfeld): Is this board outside of this door or inside the door? A. What door?

Q. The door you just described. A. No, the door leading to the engine room extends from the deck to the fantail.

Q. The board with the soundings, is it inside the door or outside? A. It is in the fantail.

Q. Inside or outside the door? A. Inside the door.

Q. Do you use the same door to get to the fantail as you use to get to the engine room? A. That is right.

Q. Can you stand outside the door and see the markings on the board? A. Outside the engine room door.

Q. Is there another door to the engine room? Two doors? A. No, there is one on each side of the engine room, but the one on the Widener, the one where the sounding board was, was located on the other side.

Q. Is there a door between the sounding board and the engine room? A. Yes.

Q. Can it close? A. It can close.

Q. If the door is closed, how can the engineer see the sounding board? A. Why should it be closed? It is warm down there, they never close the door.

Q. It is always kept open? A. It is always kept open.

Q. So a man would have to step inside the first door? A. Step inside the fantail.

Q. And this door leading from the deck, is that called by anything in particular? A. It is called the engine room door or the companionway.

Q. Does the crew call it the engine room door? A. No, they call it the companionway.

Q. But a man, in order to mark the board, would have to step inside that door? A. Yes.

Q. How far inside that door? A. He would have to walk down another story, then walk across the fantail, walk the length of the firemen's room, and turn to the right. When he gets down there, he comes in from aft.

Trial Examiner Leff: I just want to ask you this. Where do the unlicensed personnel who are attached to the engineers sleep? In the aft end of the ship?

The Witness: Aft end.

Trial Examiner Leff: And those who are under the jurisdiction of the mates, do they sleep in the forward end?

The Witness: That is right.

Trial Examiner Leff: That is where they usually hang out?

The Witness: That is right.

Trial Examiner Leff: In the course of their work, do the unlicensed personnel who are under the jurisdiction of the mates come into frequent or infrequent contact with the engineer?

The Witness: They do. We got the same dining room, and the same mess room.

Trial Examiner Leff: Do they eat at the same time?

The Witness: The firemen, coal passers, deckhands and deckwatches.

Trial Examiner Leff: Is that about the only time the deckhand would normally come in contact with the firemen, when he eats, unless he crosses from the forward end to the aft end of the ship?

The Witness: That is the only connection.

Mr. Rosenfeld: I just have a few more questions that occurred to me.

Trial Examiner Leff: Go ahead.

Q. (By Mr. Rosenfeld): Captain, in your earlier testimony, you said that when these deckhands quit, in the early part of the season, you went to speak to them because you saw there was something radically wrong. A. I called them up and asked them the reasbn they were quitting—

Q. Please bear the question in mind. You testified that you saw there was something radically wrong and that was the reason you called them up. A. I don't remember that. They were quitting and I called them up.

Q. Just an ordinary quit? A. That was not an ordinary quit. It kept on coming, I wanted to find out the reason why.

Q. What were these men's ratings? A. Most of them were deckhands and one deck watch.

Q. A.B.'s or ordinary seamen? A. Ordinary seamen.

Q. All of them were ordinary seamen? A. All of them were ordinary seamen.

Q. How many A.B.'s did you carry? A. Whatever we could get, sometimes four, sometimes five.

Q. How many were you supposed to have? A. Six.

Q. That is the certificated complement? A. That is right.

Q. Do you ever carry more than the certificated complement? A. If we can get them.

Q. What is the practice of the company in normal times with respect to carrying A.B.'s? Do they usually carry more than six if they can get them? A. We usually carry eight or nine, all we can get. Years ago we had three wheelsmen, three watchmen, and three deckhands. Nine A.B.'s.

Trial Examiner Leff: Are you finished?

Mr. Rosenfeld: Yes.

Trial Examiner Leff: There is one question I wanted to ask. I don't remember if anyone asked you about it before. So the record will be clear, will you tell me what is the distance between the fore or forward end house and the aft end house?

The Witness: I would say four hundred or four hundred and fifty feet.

Trial Examiner Leff: That is the place where the ore is stored?

The Witness: Yes. The hatches are six hundred feet from stem to stern, and I would say the forward house is forty-five or fifty feet and the aft house is seventy-five or eighty feet. Approximately that.

Mr. Rosenfeld: I have no further questions.

Trial Examiner Leff: Mr. Ray?

RE-DIRECT EXAMINATION.

Q. (By Mr. Ray): Captain, let us assume that in a given setup you were not able to get the number of A.B.'s required. What, if any, procedure would you adopt in such a situation?

Mr. Rosenfeld: May I object? I don't see the relevancy.

Trial Examiner Leff: I don't either.

Mr. Ray: If the trial examiner please, Mr. Babin testified that the Peter A. B. Widener was carrying four A.B.'s and that they were supposed to have six A.B.'s and that the vessel was unseaworthy.

Mr. Belkin: He did not testify to that.

Mr. Ray: Unsafe then.

Mr. Belkin: Even if he did, it wouldn't be relevant.

Trial Examiner Leff: Let him answer the question. Do you recall the question?

The Witness: I do. In that case I would make out a crew shortage report.

Q. (By Mr. Ray): Was the situation with respect to the carrying or non-carrying of A.B.'s if not available, changed during the war? A. It was changed. We were allowed to go without that many if we couldn't get them.

Mr. Ray: No further questions.

RE-CROSS EXAMINATION.

Q. (By Mr. Rosenfeld): Captain, if you had an A.B. and if you had an ordinary seaman and you had one position to fill, who would you hire? A. That all depends on the man.

Q. For a deck watch job, would you take the ordinary? A. I would take the ordinary. Give me a chance to explain this. Any amount of people run around with A.B.'s and never make an A.B. It is just a name.

Mr. Ray: I may say, if the trial examiner please, in connection with the matter of A.B.'s that Mr. Belkin may have made the statement on the record that the question of failure to carry A.B.'s was irrelevant because in the Shartle case there was a shortage of A.B.'s and an ordinary seaman took his place.

Trial Examiner Leff: I don't understand the purpose of the statement. I overruled the objection. Had I ruled against you, Mr. Ray, there might be a point in adding something but as it is I think it is entirely purposeless. Any further questions? The witness is excused.

(Witness excused.)

Clarence J. Brinker, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: Let us have your full name.

The Witness: Clarence J. Brinker.

Trial Examiner Leff: And your address, Mr. Brinker.

The Witness: 403 Vine Street, St. Clair, Michigan.

Direct Examination.

Q. (By Mr. Hinslea): Whom are you employed by? A. Pittsburgh Steamship Company.

Q. What ship are you now sailing? A. The Eugene W. Pargny.

Q. What ship were you master of in 1944? A. The William J. Filbert,

Q. Now do you remember a seaman on the Filbert in the early part of 1944 by the name of William Lee? A. I do.

Q. What position did he have? A. Fireman.

Q. Did you hire him? A. No, sir.

Q. He was hired by whom? A. By the chief engineer.

Q. How long have you been sailing? A. This is my thirty-fifth year.

Q. And as you observed it and practiced it, what has been the custom on the Great Lakes as to who hires and discharges the men in the aft end of the ship? A. I do.

Q. You hire the men in the aft end? A. No, I do not. The chief engineer hires them.

Q. You do the hiring— A. In the forward end of the ship.

Trial Examiner Leff: Just so we who do not sail the seas will understand. Those on the aft end of the ship are the firemen and engineers and oilers and coalpassers?

The Witness: Yes.

Q. (By Mr. Hinslea): Now, captain, did you know that Mr. Lee was a union organizer? A. I did.

Q. When did you first find that out? A. Oh, I would say that he was on there a couple of weeks before I found that out.

Q. And did you have any contacts or conversations with Lee? A. Yes, I did.

Q. Do you remember when the first conversation you had with Lee took place and where the ship was? A. It was in the early part of May, and it was at the C. & P. dock at Cleveland.

Q. Will you tell us what that conversation was and what led up to it, where it was? A. Well, there was a couple of firemen, they had been up town, they had no intentions of getting off and about the time the boat was loaded—

Mr. Belkin: I move that be stricken.

Trial Examiner Leff: Let him answer the question.

The Witness: A couple of firemen quit and I asked them why they were quitting and they told me that this Lee was bothering them for joining the N.M.U. all the time. He would not leave them alone, so they was going to be on a ship where they wouldn't be bothered like that.

Q. (By Mr. Hinslea): Do you remember who they were, what their names were? A. One was Pozy Moore and the other was McGuinness or McGuinty.

Q. And why did you inquire as to why they were quitting? A. Well, I usually do. Sometimes I don't ask them but as a rule I generally ask them why they are getting off.

Q. What is the fact as to whether or not in 1944 it was difficult to obtain seamen? A. It was very difficult to obtain men in 1944.

Q. And how long, captain, does it take to unload a cargo of ore at the C & P dock in Cleveland? A. Approximately four hours.

Q. The C & P dock in Cleveland is some distance from the main part of Cleveland? A. Yes, it is.

Q. There is no street car service near the dock? A. I don't think so, I think you got to walk quite a ways to get to the street car.

Q. Now, following this paying off of the men and finding out they were getting off because Lee bothered them, what did you do? A. I went back in the firemen's room, pulled the curtains aside, Lee was in bed, I asked him what he meant by bothering these men. He wanted to know what men. I said, "These two firemen, that you bothered them to join the N.M.U. and they told you they didn't want to join." I told him, "You got the privilege of asking any man on the ship to join the N.M.U., that is your privilege, but when they tell you no and you keep on asking them, I think it is my privilege to step in there."

Q. Was there anything else said? A. Then he comes up—

Q. I mean in the firemen's room. A. That was all, then I went out.

Q. Did you at that time call him a vile name? A. I did not.

Q. After you said that you left? A. I went up on the deck.

Q. What happened then? A. He followed me up on deck and started the conversation all over again, said he wanted to get it straightened up, that he didn't want to be accused of driving men off the ship. I told him I just got these two firemen's word for it, that is what I got to go by.

Q. Where was the conversation on deck? A. A little aft of the galley.

Q. Was the engineer around? A. I didn't see anybody.

Q. Have you any recollection what time it was, night or daytime? A. At night.

Q. Night time, what time? A. Around ten or ten thirty.

Q. Have you any recollection how the weather was at that time? Was it warm or cool? A. Just moderate. It wasn't hot and it wasn't cold.

Q. How long did this conversation last with Lee on deck that night? A. I don't think it lasted over five minutes.

Q. During that conversation, did you call him any vile name? A. I did not.

Q. Did you call the union any vile name? A. I did not.

Q. Did you use any profanity at all? A. I might have swore. That is, like any man would.

Q. But you weren't using any vile names? A. Not any vile names, no.

Q. Did you call either Lee or the union communists? A. I did not.

Q. After that, where did you go? A. Then I went up forward to my room.

Q. Now, did you have any other conversation with Lee after that from during the spring up to the time of the election? A. I probably talked to him three or four times.

Q. Where was that? A. Bottom of the No. 36 hatch.

Q. Will you tell us how that would occur and— A. Well, Mr. Lee would generally stop me after he got his supply of the Pilot and say, "Good morning, captain," or "Good evening, captain," and say, "Did you read the Pilot?" If I had, I would tell him I had; if I didn't I would tell him no.

Q. Did he give you the Pilot from time to time? A. Once in a while I would get the Pilot from him.

Q. As near as you can remember, what did you and he talk about with reference to the union or its organizing or its activities or issues? A. Well, I don't know. We talked about rotary shipping and things like that.

Q. What did you talk about rotary shipping? A. I told him my personal opinion of rotary shipping. I didn't agree with him for the simple reason that if a man had a good crew and if the master was changed to another boat I thought he should have the privilege of taking his crew back with him, and I was given to understand that the N.M.U. didn't stand for that.

Q. And was there anything else said by you or by him with reference to this rotary shipping list or rotary hiring? A. He said that wasn't so, that a man could take his crew with him. I told him that according to what I read, I didn't interpret it that way.

Q. Where did you read that? A. Oh, I don't know, in the Pilot or some other place.

Q. Now, did you discuss any other issues with him? A. I guess we discussed that Jim Crow pamphlet there more than once.

Q. What did you discuss about that with him? A. Oh, about the colored help.

Q. Just tell us what you said and what he said. A. Well, I told him, "I understand that according to what that pamphlet says if the Pittsburgh boats went CIO, chances are that you will be having to work with colored fellows and also sleep with them." He says no, that wouldn't be. I says, "It is down on the coast that way." He says, "Down on the coast is different but that would never happen on the lakes." I asked him why, it is national, that is all that was said about that.

Q. Did you at any time ever, discussing the negro question, call the union "nigger lovers" and use a vile name? A. I did not.

Q. Have you had negroes working for you when you have been captain? A. I have had negro stewards in my galley.

Q. And it is common practice of the Pittsburgh Steamship Company to have colored help in the galley? A. Yes.

Q. As a matter of fact, it is one of the few companies who have? A. Yes.

Q. Have you been shipmates with them when you were second mate? A. Yes.

Q. So that over your thirty-five years you have been shipmates with negroes? A. I have been shipmates with negroes quite often.

Q. Now, did you ever discuss with him the issue of overtime? A. Well, I guess one day we did discuss that issue of overtime and I told him I didn't believe that a man should be paid any overtime if he didn't work over his eight hours, shouldn't be paid overtime for an eight-hour day.

Q. That he should be paid the regular rate? A. Yes, but if he worked over eight hours, he was perfectly entitled to overtime which we were paying.

Q. Now, this pamphlet that you are talking about, how did that come aboard the ship? A. Through the mail.

Q. How was it addressed?

Trial Examiner Leff: This pamphlet "N.M.U. Fights Jim Crow."

Q. (By Mr. Hinslea): How was it addressed? A. I wouldn't say.

Q. Was it addressed to an individual or to the position the man had? A. It would be addressed to your position, title.

Q. And was there any indication, if you know, on the envelope where it came from? A. No, sir.

Trial Examiner Leff: May I ask a question at this point? When the company mails letters to its men on board the ship, does it address them by title or by name?

The Witness: By title and name. Like, if I get a letter it would be Captain Clarence J. Brinker.

Trial Examiner Leff: Suppose the company sends a letter to all its personnel?

The Witness: Then it would be just the name.

Trial Examiner Leff: Just the name or the title?

The Witness: Just the name.

Trial Examiner Leff: The name of each seaman?

The Witness: Yes, sir.

Q. (By Mr. Hinslea): Now, captain, is it a practice for the company to send separate letters—strike that. In your experience, has it been the practice for the company to write letters to the individuals? A. It was.

Q. What is the practice so far as passing on information to the crew is concerned? How do they do that? A. It is generally mailed to the master, the master passes it on to the crew.

Q. Do you remember a letter or two coming from the Pittsburgh Steamship Company prior to the election signed by Mr. Ferbert, the president of the company? A. Yes, sir.

Q. How did that come aboard? A. That come aboard addressed to the master and there was one sheet in there, one letter for each man. It wasn't in an envelope, it was in a big blue sheet.

Q. In other words, thirty-six of those letters came in an envelope addressed to you, and was there a company letter instructing you what to do with them? A. Yes, there was.

Q. That instruction was to pass them out like a pamphlet? A. Yes.

Q. That is the practice, of distributing anything to the unlicensed men? A. That is the practice unless it is something personal. Anything circular, the master gets it all.

Q. Captain, these conversations that you had with Lee on the aft hatch, were there anybody present when you had these conversations? A. No, sir.

Q. And was it your practice to go back with all the men or was it your practice to wait till the second bell? A. I would generally wait till the second bell.

Q. Why? A. I had to give the steward—not the steward,—the second cook a chance to wait on the men ahead of me because they have watches to stand and they have to get out of the dining room a little earlier than I do.

Q. In other words, they have to relieve their partners? A. They have to relieve their partners.

Q. You don't have that responsibility? A. That is right.

Q. There were two bells, the first bell and the second bell? A. Generally, yes.

Q. Now, captain, did you ever—what is the fact as to whether or not you ever said to Lee that if things get organized and before a contract is signed, I am going to hire a big nigger to be your partner and the bigger the better? A. I never said no such thing. In fact, I don't hire the aft crew anyhow.

Q. Captain, did you ever have an argument of any kind with Lee which involved a porter in the galley by the name of Conn? A. No.

Q. Did you ever talk to any of the porters about unionism? A. No, sir.

Q. Did the chief engineer live in Cleveland? A. Yes, sir.

Q. And this was the first trip that you were in Cleveland? A. Yes, sir.

Mr. Belkin: I don't know what you mean by that.

Mr. Hinslea: Well, this is the first time you were in Cleveland in 1944.

Mr. Belkin: You mean the first conversation?

Mr. Hinslea: No, I am just asking him—

Mr. Belkin: Oh, I understand, I am sorry.

Q. (By Mr. Hinslea): Captain, what is the fact as to whether or not you shook your fist in Lee's face? A. I never did no such thing.

Q. And caused him to retreat across the deck? A. I never did.

Q. Did you, captain, ever shake your finger in his face in a threatening manner? A. No, sir. In fact, he is a bigger man that I.

Q. Did you ever foam at the mouth when you argued with him? A. I never foamed at the mouth in my life.

Q. Now, how long did these talks last in the aft hatch that you said you had? A. About two or three minutes.

Q. You didn't discuss all these subjects at one time? A. Different times.

Q. How far, captain, is the mess room from the place that you were talking? A. I would say twenty feet.

Q. And the mess room is inside, in the cabin? A. Yes, sir.

Q. How far is it from where you were talking in the aft hatch back to the dining room where the men eat? A. I would say that was seventy-five feet or more.

Q. Did you ever feel that Lee, during these conversations, was egging you on?

Mr. Belkin: Objection.

Mr. Hinslea: He can form an opinion.

Trial Examiner Leff: Let's find out what Lee said. I don't think that is a proper question. Objection sustained.

Q. (By Mr. Hinslea): Captain, I hand you a document which is entitled "Log Sheet," I hand you this document and ask you what it is. A. That is a record of our trip No. 3.

Q. And I see your name on the outside. Is that your signature? A. Yes, sir, that is my signature.

Q. Will you tell us, from that sheet, where the steamer Filbert was on April 18, 1944. A. April 13th?

Q. April 18th. A. Well, she passed here at Iraquoy Point at 7:23 p.m. That is next to the Soo River.

Q. Where would she be from midnight of the 18th up until midnight—beginning of the 19th? A. She was on Lake Superior and in the Soo River.

Q. Which way, up bound or down? A. Down bound. She landed in the Soo at 11:44 p.m.

Mr. Hinslea: That is all.

CROSS EXAMINATION.

Q. (By Mr. Belkin): Captain, do you know a man named Mr. John Zyp? A. Yes, sir.

Q. He works for the Pittsburgh Steamship Company? A. Yes, sir.

Q. What is his position? A. Personnel department.

Q. He has charge of hiring men? A. Yes, sir.

Q. Now, captain, you said you talked to Mr. Lee on the No. 36 hatch, is that correct? A. Well, now, do you have reference to that conversation at—

Q. Not the first one. Thereafter. A. Yes, the 36 hatch.

Q. And that occurred as you were going to dinner or to some meal? A. Yes, sir.

Q. About what time of day? A. Generally around supper time.

Q. And Lee was not going to supper at that time, I understand? A. No.

Q. Do you know what he was doing out on the 36 hatch? A. Standing there as far as I could see.

Q. Wasn't it during his watch time, his watch, that the fireman would come out? A. Two to six watch.

Q. Did Lee have a partner? A. Yes.

Q. And that partner would generally come out of the engineer's room at the same time? A. No.

Q. They alternated? A. Not when they were on watch. They alternated.

Q. You were telling us something about the bells, you said sometimes there were two bells and sometimes there weren't. A. Well, I will tell you what. We rang one bell a quarter to the hour. That is last year. I am not referring to this year. And then the crew went back to eat.

Q. Sometimes you did not ring that bell? A. Yes, that bell was always rung.

Q. Yes, but sometimes you did not ring the second one? A. No.

Q. So you often went back without waiting for the second bell? A. Yes, around the time the second bell would ring, which would be on the even hour.

Q. Then you talked to Lee on the 36 hatch? A. Yes, sir.

Q. Then you testified you talked about rotary shipping and other stuff? A. Yes.

Q. What was the other stuff? A. I didn't say other stuff. About rotary shipping and the Jim Crow pamphlet.

Q. Isn't it true that in response to the question by Mr. Hinslea, when he asked you what issues did you discuss, you said we talked about rotary shipping and stuff like that? A. Probably, if you got them down there.

Q. What was the "stuff like that" you talked about? A. Just ordinary conversation.

Q. Like what? A. Steamboating.

Q. What else? A. That is all.

Q. Was it your custom to talk to members of your crew if you found them on deck about steamboating? A. Sometimes.

Q. Was it your custom to talk to them about rotary shipping, too? A. No.

Q. You just talked to Lee about that? A. Yes.

Q. You just talked to him about steamboating at the same time? A. Yes.

Q. What issues in steamboating did you talk about with Lee? A. About firing, one thing and other, how she was steaming, things like that.

Q. Did you ask the other fireman about these things? A. Asked how he liked his job.

Q. This was sometime in May that you talked to Lee on the 36 hatch? A. Different times.

Q. It was during May and June, was it not? A. It was from April, May and June.

Q. You talked to Lee on the 36 hatch in April? A. I went aboard that boat in March.

Q. And it was your testimony that you talked to him about these issues in April, May and June? A. I don't think it was any specified month.

Q. You talked to him during the voyages? A. Different times.

Q. Now, you started to sail that boat when? A. Let's see, when did we leave Milwaukee? We left the first day of April.

Q. The first day of April. A. That is when we sailed.

Q. When did you lay it up? A. I got off on Thanksgiving day.

Q. And the election involving the union was held on your boat sometime in June? A. Sometime after the 6th of June.

Q. And during the months of April, May and June, up until the election, you talked to Lee about rotary shipping and other things, is that right? A. That is right.

Q. In other words, you talked to Lee about rotary shipping and other things like that before Pozy Moore and McGuinness left the ship, didn't you? A. I wouldn't say to that, no.

Q. McGuinness testified today that he left the ship on May 12th, so you must have talked to him before that. A. Couldn't I talk to him after May 12th?

Q. I guess you testified you did, but you also talked to him before May 12th. A. To Lee?

Q. Yes. A. I guess I did. In fact, I talk to them all, firemen, deckhands, I don't care who they are.

Q. And you talk to them about rotary shipping and steamboating as well as to Lee? A. I didn't talk rotary shipping to anybody but Lee.

Q. Why did you single out Mr. Lee for that? A. Because I think he brought it up.

Q. Mr. Lee would bring the question up? A. He would bring it up.

Q. Each time? A. Yes, sir.

Q. Did you ever talk about this Jim Crow pamphlet with Mr. Lee? A. I discussed it with him once.

Q. Just once? A. Just once.

Q. Did you ever discuss the Jim Crow pamphlet with anybody else? A. I did not.

Q. Just with Mr. Lee? A. Yes.

Q. Will you tell me why you singled out Mr. Lee to discuss that pamphlet? A. Because Mr. Lee asked me personally if I got one of those pamphlets.

Q. Because Mr. Lee asked you personally if you got one of those pamphlets? A. Yes, because he asked me personally if I got one of those pamphlets.

Q. You knew, of course, didn't you, that the pamphlet "N. M. U. Fights Jim Crow" was being used against the union on the Great Lakes? A. I had no recollection what it was being used for.

Q. Did you read the pamphlet? A. I read it.

Trial Examiner Leff: Where did you get it?

The Witness: It come through the mail. Last year wasn't the first year I saw one of them. I saw them before that.

Q. (By Mr. Belkin) After you read the pamphlet, it was your impression that that pamphlet was being circulated by the N. M. U.? A. I didn't form an opinion.

Trial Examiner Leff: Was that one of the pamphlets that you testified came to you in bulk for distribution to the members of the crew?

The Witness: It was.

Q. (By Mr. Belkin) This pamphlet came under separate cover to you and each member of the crew? A. It came in an envelope.

Q. That is what I mean by separate cover. Mr. Brinker, there is quite a turnover in personnel aboard your ships? A. It is.

Trial Examiner Leff: Before you go into that, Mr. Belkin. Mr. Rosenfeld, you told me when we met in Cleveland that you were going to produce a copy of that pamphlet. Will you try to have it here because there has been so much reference to it, it may become necessary to describe the pamphlet. I would like to see it.

Mr. Rosenfeld: Yes, I will try to supply one.

Q. (By Mr. Belkin) And there was quite a turnover in 1944. A. Yes, sir.

Q. So the company does not know the names of all its personnel, let us say, within a period of a month? It is not in constant check with the names of all its personnel within a month's time, is that true? A. What do you mean by that?

Q. I will put it right to you. Is it not true that because of this constant turnover, the company addresses its mail to the wheelsman, the deck watch, and so on, rather than naming them, because it is never quite sure as to what people will be filling these positions? A. They don't mail any mail personally to the unlicensed crew.

Q. They mail it to the deck watch and so on? A. No.

Q. How do they mail it? A. If it is a circular letter it is mailed to the master.

Trial Examiner Leff: To the master?

The Witness: Yes.

Q. (By Mr. Belkin): Copies of which would be distributed? It is mailed to the master and you pass it out? A. Yes.

Q. And that is what occurred with the two Ferbert letters in May and June? A. One.

Q. You only saw one letter? A. Only one letter to be distributed to the crew.

Q. Weren't there two? A. I think there was two. The second one wasn't for the crew, it was for the master.

Q. I want to direct your attention to this letter and after you look at it—it is marked Board's Exhibit 2—I want you to tell me if that is the letter you distributed amongst the crew or whether it isn't. A. I wouldn't say that is the one.

Q. Now, directing your attention to what has been marked Board's Exhibit 3, I want to ask you if you have seen that before? A. That one sounds more like the one.

Q. You said that sounds more like the one. What do you mean? A. I think that is the one.

Q. You have seen this before and that is the one you circularized to the crew? A. That is the one.

Mr. Hinslea: Which one is that? June 1st?

Mr. Belkin: That is it.

Q. (By Mr. Belkin): By the way, was Mr. Zyp aboard your ship in June, 1944? A. I don't remember.

Q. Would your log show it? A. No, it wouldn't.

Q. Is it customary for Mr. Zyp to come aboard your vessel during your voyages? A. He generally comes once or twice a season.

Q. You don't recall him coming this time? A. I do not.

Q. You said once you did discuss overtime with Mr. Lee? Did you ever discuss the bonus system? A. No, I did not.

Q. Did you ever discuss the leadership of the N. M. U.? A. No, sir.

Q. I believe you also testified that you got your information on the rotary shipping list from the Pilot and from some other place, Mr. Brinker—I should say Captain Brinker. A. You may call me Mr. Brinker or just

Brinker, it doesn't make any difference. From some other place, I don't recall just where I got it.

Q. Didn't you get this information from material furnished you, mailed you by the company? A. No, sir.

Q. The company never mailed you anything like that? A. The company never mailed me anything like that.

Q. You got it just from the Pilot or some other place? A. Yes.

Q. You do not recall at this time what other place? A. No, I do not.

Q. Were there any other maritime publications discussing the rotary shipping list? A. Not to my knowledge, no.

Q. Now, captain, I am interested in just one general point. Who is responsible for orders and—strike that. On board the ship, what individual is responsible for the welfare of the men in the ship? A. The master.

Q. That would be you, wouldn't it, aboard your ship? A. Yes, sir.

Q. So that you are the final authority on all matters involving personnel aboard your ship? A. Yes, sir.

Q. So that even though a chief engineer might hire a man, you have the authority to dismiss him, isn't that true? A. I—

Q. I am not asking you whether you do or not, you have that authority? A. It is understood that I have that authority as master of the ship.

Q. As a matter of fact, even though the chief engineer hires his men and you don't interfere with that, as I understand, you have the authority to hire the man for him totally? A. That is my belief, yes.

Q. Now, when you came up into Lee's room and pulled aside the curtain, the men on Lee's watch were sleeping in that room with him? Were in their bunks with him? A. That I don't know, I didn't look. I just went down to Mr. Lee's bunk.

Q. It was customary for the men on one watch to go to bed about the same time? A. They might have been up town, the men off watch.

Q. So far as you know, they were not? A. So far as I know there wasn't anybody in that room but Lee.

Q. You don't deny there might have been somebody else in there? A. No, I don't deny that.

Q. As a matter of fact, you were kind of peeved with what you had heard? A. I wouldn't say peeved. I didn't like it.

Q. It kind of got you mad? A. No, it didn't get me mad.

Q. You took it very calmly? A. Yes.

Q. Why didn't you wait till Lee was up in the morning and call him in your cabin and tell him about it? A. Because I wanted to settle it right there.

Q. So you were hot under the collar? A. No, not necessarily hot under the collar. Nobody hesitates to wake me up if they want to settle something.

Q. So, it was your custom, if you had anything to settle, if you had things with the men to settle, you would settle it then and there, no matter what time it was? A. I wouldn't say that. Lee wasn't sleeping.

Q. You did not know that when you went down there, did you? A. No.

Q. When Lee came up on deck you told him again in no uncertain terms what you thought of his conduct, didn't you? A. I did not. If you strike out "no uncertain terms" maybe it would sound a little better.

Q. Well, how would you put it? A. I would say that I talked to him again about his conduct.

Q. Then, of course, as you testified, you talked to him several times both before and after this conversation, with respect to the two firemen quitting, on the 36 hatch, didn't you? A. What was the question?

Q. You talked to him also, in addition to this conversation about the two firemen quitting; you testified you talked to him several other times? A. During the course of time, yes.

Q. Yes. So it got so all the men were familiar with the fact that you and Lee were having conversations with respect to rotary shipping and other things like that? A. No, I wouldn't say that, unless Lee told them.

Q. But it is true that the men aboard your ship knew you were talking to Lee? A. They didn't know what we was talking about.

Q. But they knew you were talking to Lee? A. Yes.

Q. They could see you were discussing a problem. It got to be something they looked forward to? A. No, it wasn't.

Q. You made a habit of doing it? A. I didn't make a habit of doing it, maybe once a week, once every two weeks, we talked about things we read in the Pilot.

Q. It wasn't a habit but you would have discussions with him once a week or once every two weeks about things you read in the Pilot, is that right? A. As I told you before, Mr. Lee is the one who stopped me all the time.

Q. What is your answer to my question, first of all, yes or no. I repeated your own statement. Then it is true that once a week or every two weeks you talked to Mr. Lee about issues you read in the Pilot, isn't that true? A. That is right.

Q. And it got so the crew knew you were talking about issues that you read in the Pilot? You made no secret of it? A. I didn't go around publishing it.

Q. You made no secret of it? A. As I said before, Mr. Lee told them if they knew.

Q. As a matter of fact, they didn't know of your conversation to your knowledge? A. To my knowledge they don't know it because nobody was around there to see us.

Q. You didn't make any attempt to keep the conversation a secret? A. It would be just as secret as if everybody else walked out of this room and you and I sat and talked. It would be just as much of a secret.

Q. I am not really too much interested in this, believe me, Captain Brinker, but on the question regarding the matter of swearing and so on, you testified that you didn't call Mr. Lee any vile names or say any vile things about the union but that you might have sworn like any man does. What do you mean by that? What is the difference between swearing and vile names? A. Do you ever use a cuss word?

Q. I am asking you a question. A. Well, I didn't call Lee any vile names, if that is what you mean?

Q. Did you use any vile words? A. I might have said "goddamn."

Q. Nothing stronger? A. No.

Q. And if Mr. Lee testified you used stronger language, you would say that wasn't true? A. I would.

Q. Now, in the course of your conducting and directing your ship, do you feel called on to use profanity occasionally to spur the men on? A. Yes.

Q. That is not unusual, is it? A. No, but using profanity and calling a man vile names is two different things.

Trial Examiner Leff: What distinction do you make between profanity and vile names. Give an example of something profane and something vile.

Mr. Belkin: I have another question.

Trial Examiner Leff: What would you yourself call profanity and what using a vile name?

The Witness: Profanity is like "goddamn," something like that, or "hell," something like that.

Trial Examiner Leff: What is vile?

The Witness: Well, if you think, if anybody thinks I called him a "son-of-a-bitch" that is wrong. That is what I call a vile name. I didn't use them words at all, but I say I might have used "goddamn" something like that.

Mr. Belkin: May I continue?

Q. (By Mr. Belkin): Who was this boy Conn? A. It was my recollection he was a porter.

Q. What happened to him? A. He quit.

Q. Did he discuss with you the reason for his quitting? A. No, sir.

Q. Didn't you say that you generally talked to the men about why they quit? A. I didn't say generally, I said sometimes.

Q. And this is one of the times you didn't, you didn't talk to Conn? A. Most of the time I left it up to the mate, and if a man has been there any length of time, like six weeks or two months, I may ask the mate why.

Q. Is it not true that you talked to Conn about some statement Lee had made to him? A. No, sir.

Q. Is it not true you talked to Lee about some statement he may have made to Conn? A. No, sir.

Q. That never occurred? A. No.

Q. Conn left the ship and you don't know why? A. Maybe the mate would know why.

Q. Did you ask the mate? A. I don't recall.

Q. Think a while. A. If you have fifty or sixty or maybe a hundred men, you can't ask each one why they got off.

Q. Now, captain, I understand that. I am just asking you whether you asked any of the mates about Conn? A. No, I did not.

Q. You were short men, weren't you? A. Well, no, I don't know, I didn't go short so very much last year.

Q. Isn't that contrary to your previous testimony that you were short men and that is why you were so upset because Pozy Moore and McGuinness left? A. My previous testimony was it was hard to get men.

Q. And since it was hard to get men, didn't you check up on why Conn left? A. Not to my knowledge.

Q. Didn't you attempt to find out whether Lee had tried to persuade Conn to join the union? A. No, sir.

Q. You made no effort? A. I made no effort.

Q. Did you try to find out from any of the other men who quit in the spring of 1944 if Lee had attempted to persuade them to join the union? A. I might have asked a few of them.

Q. Do you remember any of the men you did ask whether Lee was attempting to persuade them to join the union? A. You mean their names?

Q. Yes. A. No.

Trial Examiner Leff: Did you ask anyone whether Lee attempted to persuade them to join the union?

Mr. Ray: He testified when they were getting off.

The Witness: When they were getting off sometimes I would ask why they quit.

Q. (By Mr. Belkin): Did you ask them if Lee had attempted to persuade them to join the union, if that was why they were quitting? A. No.

Trial Examiner Leff: Might you have?

The Witness: I might have asked them that question.

Q. (By Mr. Belkin): Now, in all seriousness, I have just one more question to ask you. In the course of your arguments or discussions with Lee, do you really want us to believe that you never used any gestures to emphasize your points? A. I am telling you the truth, it is up to you. I suppose I could gesture like this (demonstrates, gesticulates) but if you mean I point my finger like this, I didn't do that.

Mr. Rosenfeld: The record should show that the witness pointed his finger three inches of Mr. Belkin's nose.

Trial Examiner Leff: Have you any questions, Mr. Rosenfeld?

Mr. Rosenfeld: Yes, I think so.

CROSS EXAMINATION.

Q. (By Mr. Rosenfeld): Captain, when was the first time you ever spoke about negroes on the Pittsburgh ships with Mr. Lee? A. Just that one time when I was discussing that pamphlet.

Q. How did it happen? Where—when was it, what was the date, approximately. A. I wouldn't know the date.

Q. Give us the month. A. I wouldn't even give you the month. I know it was before the election.

Q. Where on the ship did it occur? A. Around the 35 or 36 hatch.

Q. At what time of the day was it? Around night time? A. Around supper time.

Q. That would be about six o'clock? A. Around that time.

Q. Had you received a copy of the pamphlet "N.M.U. Fights Jim Crow" earlier? A. I had.

Q. And you were walking aft to the hatch room and you saw Lee sitting on the hatch? A. Standing.

Q. Standing by the hatch? A. Yes.

Q. What did you do? What did you say? A. He stopped me and talked.

Q. What did he talk about? A. About the N.M.U.

Q. What did he say about the N.M.U.? A. One thing, he asked me, he mentioned about the Jim Crow pamphlet.

Q. Were you carrying your copy in your hand? A. No, sir.

Q. Did anything precede his mentioning the Jim Crow pamphlet? A. No, not to my knowledge.

Q. What led up to it, if anything? A. Well, he just asked me.

Q. What did he ask you? A. In fact, he told me about the pamphlet.

Q. What did he tell you? A. If I remember right, he told me the Pittsburgh Steamship Company had done a nice trick by sending that pamphlet out.

Q. What did you say? A. I said I didn't know who sent it out, I didn't think the Pittsburgh Steamship Company had sent it out, to tell the truth I didn't know who sent it.

Q. What else did you say? A. We were discussing the negro question.

Q. What did you say about the negro question? A. I told him that according to that pamphlet that if the Pittsburgh boats would happen to go CIO he would probably have a colored man to work with and a colored man to sleep with in his room.

Q. Did you express an opinion about having negroes aboard the ship? A. No, I did not.

Q. You told him it would be all right with you if the company had negro deckhands, wheelsmen, firemen, oilers? A. I did not.

Q. You expressed no opinion at all, one way or the other? A. No, sir.

Q. Did you express any opinion about the union's program on the Jim Crow issue? A. No, sir.

Trial Examiner Leff: Do you have any opinion on that?

The Witness: I do not.

Mr. Ray: If the trial examiner please, I don't think his opinion is relevant.

Trial Examiner Leff: Did you have any opinion at that time?

The Witness: No.

Q. (By Mr. Rosenfeld): Why then did you tell Lee that if the union won the election he would have to sleep and work with negroes? A. I didn't say he would have to, I said probably he would have to.

Q. Why did you say that? A. Because if this pamphlet is right, there is no discrimination between the races.

Q. Why did you say that? Did it make any difference to you? A. It didn't make any difference to me.

Q. Why did you tell him he might have to work with negroes and sleep with negroes? A. It was on that subject.

Q. What was the point of it, that particular remark? A. No point.

Q. You were just talking without any point, is that right? A. Yes.

Mr. Rosenfeld: No more questions.

Trial Examiner Leff: You referred to a letter that you received from the company concerning the union. Did you receive any letter other than the letters that were shown to you by counsel?

The Witness: No, that was the only one.

Trial Examiner Leff: That was the only one. Did you ever receive a letter from the company in which you were told to be neutral?

The Witness: No, sir.

Trial Examiner Leff: Any further questions?

Mr. Rosenfeld: Mr. Examiner, I think both Mr. Belkin and I overlooked one exhibit.

Q. (By Mr. Rosenfeld): Captain, I show you Board's Exhibit 4 and ask you if you saw that on the Filbert last season? A. I did.

Q. Did you get a copy? A. I did.

Q. How did you get it? A. Through the mail.

Q. How did it come on the boat, through the mail? A. In an envelope.

Q. Was it more than one copy in the envelope? A. Just one copy in a white envelope.

Q. Was it addressed to you by name? A. By title.

Q. Did the envelope have a return address? A. I don't recall that it did, I don't think it did.

Q. Just a plain white envelope? A. I think that is what it was.

Q. Did you see any other copies on board? A. I didn't look.

Q. You don't know whether anybody else on board got that? A. I did not.

Q. Do you know whether any of the other officers got it? A. I do not.

Q. Did you mention this pamphlet to anybody? A. I guess I mentioned it to the officers.

Q. Did you ask them whether they got a copy? A. No, I did not ask them.

Mr. Rosenfeld: That is all.

Trial Examiner Leff: Any further questions? The witness is excused.

(Witness excused.)

Trial Examiner Leff: When do we adjourn to now? Off the record.

(Discussion off the record.)

Trial Examiner Leff: On the record. The hearing is adjourned to 10:30 tonight.

(Whereupon at 5:15 A.M. the same day the hearing was adjourned till 10:30 P.M. the same day.)

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Vol. II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 732

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE PITTSBURGH STEAMSHIP COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 5, 1950

CERTIORARI GRANTED MAY 8, 1950

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(Filed August 2, 1945.)

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	Direct	Cross	Re-Direct	Re-Cross
Jack Lawrenson	699	701	...	...
Arno Weissflog, Jr.	701	703	...	...

BOARD'S EXHIBITS.

	Identified	Offered	Printed
1A. Amended Charge (July 2, 1945)	11	11	1
1B. Notice of Hearing (July 10, 1945)	11	11	2
1C. Affidavit of Service of Complaint and Notice of Hearing (July 10, 1945)	11	11	3
1D. Complaint (July 10, 1945)	11	11	4
1E. Answer to Complaint (July 20, 1945)	11	11	6
2. Letter, May 2, 1944, Pittsburgh Steamship Co. to All Unlicensed Employees	45	57	743
3. Letter, June 1, 1944, Pittsburgh Steamship Co. to All Unlicensed Employees	46	57	744
4. Speech of Fred Bradley, May 19, 1944, in the House of Representatives	126, 164	126	746
5. Stipulation for Certification Upon Consent Election, Dec. 15, 1943	273	273	757
6. Decision and Order of the National Labor Relations Board in Case No. 8-R-1324, June, 1944	274	274	760
7. Pamphlet, "NMU Fights Jim Crow," Published by the National Maritime Union	645	645	762
8. Agreement, April 30, 1943, between Nicholson Transit Co. and National Maritime Union	709	709	771

RESPONDENT'S EXHIBITS.

		Identified	Offered	Printed
1.	Letter, Aug. 17, 1945, Duncan, Leckie, McCreary, Schlitz & Hinslea to National Labor Relations Board	623	624	791
2.	Letter, Oct. 1, 1945, Chester R. Zeiss to W. C. Garbutt	627	628	792
3.	Memorandum, May 6, 1944, Pittsburgh Steamship Co. to Masters and Chief Engineers	657	657	793
4.	Circular Letter, May 31, 1944, Pittsburgh Steamship Co. to Masters	657	657	794
5.	Circular Letter, May 31, 1944, Pittsburgh Steamship Co. to Masters	657	657	795
6.	Memorandum, June 1, 1944, Pittsburgh Steamship Co. to Masters and Chief Engineers, Enclosing Letter to All Unlicensed Employees	657	657	797
7.	Memorandum, May 2, 1944, Pittsburgh Steamship Co. to Masters and Chief Engineers, Enclosing Letter to All Unlicensed Employees	657	657	797

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Telegram Granting All Parties Extension of Time to File Briefs (Oct. 8, 1945) 799

Intermediate Report of Trial Examiner (Dec. 28, 1945) 799

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Company's Letter Requesting Extension of Time to File Exceptions and Brief (Jan. 5, 1946) 844

Telegram Granting All Parties Extension of Time to File Exceptions and Briefs (Jan. 8, 1946) 845

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VOLUME II.

Hotel Duluth,
Duluth, Minnesota,
Sunday, September 2, 1945.

The above entitled matter came on for hearing, pursuant to adjournment, at 10:00 a.m.

BEFORE:

ARTHUR LEFF, Trial Examiner.

APPEARANCES:

LOUIS S. BELKIN, Attorney, National Labor Relations Board, Eighth Region, Cleveland, Ohio, appearing for the National Labor Relations Board.

L. C. HINSLEA, Attorney, and LUCIAN Y. RAY, Attorney, 1970 Union Commerce Building, Cleveland, Ohio, appearing for the Pittsburgh Steamship Company.

HERMAN ROSENFELD, Attorney, 291 Broadway, New York City, appearing for the National Maritime Union of America (CIO).

Trial Examiner Leff: The hearing is in order. Let the record show that the hearing which was scheduled for 10:30 p. m. yesterday was adjourned to 10 a. m. this morning at the request of the respondent.

ARTHUR CHARLES KING, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?
The Witness: Arthur Charles King.
Trial Examiner Leff: Your address?
The Witness: Wautoma, Wisconsin.

DIRECT EXAMINATION.

Q. (By Mr. Ray): What is your occupation? A. Licensed pilot, Pittsburgh Steamship Company.

Q. What vessel are you on? A. George T. Crawford.

Q. Were you employed on any one of the Pittsburgh vessels during the navigation season of 1944? A. On the Filbert.

Q. In what capacity? A. Third mate.

Q. How long have you sailed? A. Eleven years.

Q. What licenses do you have? A. Pilot's license, first class pilot's license.

Q. While you were on the Filbert, were you acquainted with a seaman by the name of William Lee? A. Yes, I was.

Q. What was Lee's rating on that vessel? A. Fireman.

Q. While you were on the Filbert during the 1944 navigation season, state whether or not you saw or had in your possession a pamphlet called "N.M.U. Fights Jim Crow"? A. Yes, I did have.

Q. Do you have any knowledge as to how that pamphlet came aboard the vessel? A. It came by mail.

Q. Did you receive that pamphlet by mail? A. Yes, I did.

Q. How was it addressed? A. It was addressed to the third mate of the Filbert, the third mate on the boat.

Q. Mr. King, state whether or not you distributed that pamphlet to any of the unlicensed personnel on the steamer Filbert, and specifically whether you handed a copy of that pamphlet to Mr. Lee while Mr. Lee was in his bunk?

Trial Examiner Leff: Suppose we break that up into two questions. First, did you distribute that pamphlet to any members of the unlicensed personnel?

The Witness: No, it came by mail. We don't distribute the mail.

Trial Examiner Leff: Did you give it to Mr. Lee?

The Witness: No, it came by mail. I don't distribute the mail.

Q. (By Mr. Ray): Mr. King, what was the practice on the Filbert during that season as to the distribution of material that came by mail addressed to the unlicensed personnel by rating? A. We get the mail aboard the supply boat at the Soo either in a bag or tied up in a bundle. We take it up forward, sort it out. There are three departments—galley, forward and aft ends. And after we sort it, there is a mail box for the forward end in the crew's hall, and put the mail in t at box, then we either take the mail back aft ourselves to the cook and engine room or else give

it to a deck watch and he takes it and gives the cook the mail. The cook always comes up to the supply boat, and the engineer's mail we give to the chief engineer.

Trial Examiner Leff: Do you recall whether there were any stamps on the envelopes?

The Witness: No, I don't recall that. Sometimes the mail comes with a stamp, sometimes it hasn't. Some form letters have just a permit. I don't know whether it has a stamp on it or not.

Q. (By Mr. Ray): Mr. King, while you were on the Filbert during the 1944 season, state whether or not you saw or had in your possession a reprint of a speech by Congressman Fred Bradley? A. Yes, I remember having that.

Q. How did that speech come aboard the Filbert? A. That came by mail, too.

Q. Now, did you or did you not ever distribute a copy of that speech to Mr. Lee? A. No, it came by mail, I don't distribute the mail.

Q. State whether or not you ever distributed a copy of the speech to any of the other unlicensed personnel aboard the Filbert? A. No, I did not.

Mr. Ray: You may cross examine.

Cross Examination.

Q. (By Mr. Belkin): Did you know that Lee was an organizer of the N.M.U. aboard the ship? A. Yes, I did.

Q. How did you find it out? A. He used to sign up different crewmen.

Q. Sign them up in your presence? A. No.

Q. How did you find out he was signing them up? A. That is just hearsay. I never saw him signing them up.

Q. Hearsay from whom? A. Different members of the crew.

Q. Will you tell me the names of anyone in the crew who told you about it? A. No, I don't remember most of their names. They are only there for a week. None of the steady men that I recall. They had all kinds of men there for only a week. I wouldn't know them if I saw them again.

Q. You seem to make a differential between the steady men and these men. A. Some were aboard the boat all season and some were on and off the boat.

Q. How do you account for the fact that the steady men did not tell you this but the others did? A. There was only one steady man in the aft and he was there all season. The others were on and off the boat. Only one man stayed all season. I never talked to him. The wheelsmen on our boat never talked about the union.

Trial Examiner Leff: Keep your voice up.

Q. (By Mr. Belkin): Keep your hand away from your mouth, it makes it hard to hear. I speak for the reporter's benefit.

Trial Examiner Leff: I can't hear him.

Q. (By Mr. Belkin): Now, Mr. King, in your conversation with these men, when they told you about Mr. Lee signing up for the union, did they discuss with you any of the things Mr. Lee told them? A. No.

Q. How did they happen to tell you Mr. Lee was signing them up? A. I don't know. We are on the boat twenty-four hours a day, I talked to the crew, naturally you got to have something to talk about after being there all season.

Q. Because there was an organizational campaign going on? A. Naturally somebody would say they signed up to the union. Whether they did or not, I don't know.

Q. What did you say in discussing the union with them? A. I never discussed the union with anyone on board except Lee. I talked to him one time about the union.

Q. When was that? A. One nice day I walked back aft. He was sitting in the hatch. I came along and started talking to him about an article I read in the Pilot.

Q. What was the article? A. It was about licensed men not taking A.B. jobs when times are bad.

Q. That is rotary shipping? A. Yes.

Q. What did you say to Lee about rotary shipping? A. I told him that the steady men that had worked for the company, like I had worked for the company ten years, I said that when hard times came I thought I had a job, that is what we talked about.

Q. As you understand it generally, state whether the Pittsburgh fleet officers felt pretty bitter about rotary shipping.

Mr. Ray: Objection.

Trial Examiner Leff: Sustained.

Mr. Belkin: I am asking this man's opinion.

Trial Examiner Leff: How would he know unless they expressed their feeling?

Q. (By Mr. Belkin): Did you ever discuss with any of the officers on the Filbert their attitude toward the rotary shipping policy? A. No, it did not affect them. The mate and the captain and the second mate surely would never have to go back to Wheeling.

Q. The third mates were liable to be bumped? A. Yes.

Q. And if there was a cutback in personnel, if there is no rotary shipping system in existence, you would go down to the job of wheelsman or deck watch? A. That is right.

Q. If there is a rotary shipping list system in use, then you fellows are bumped off the ship because the ship would carry just two mates? A. That is right—no.

Trial Examiner Leff: Carry two mates?

The Witness: It would carry three mates, but I wouldn't be one of the mates. They would keep the older mate and let me go.

Q. (By Mr. Belkin): Did you discuss this with any of the other third mates aboard the Pittsburgh Steamship vessels? A. No, I did not.

Q. This was just your individual judgment of the situation? A. That is right.

Q. Now, in your conversation with Mr. Lee on the hatch—by the way, what hatch was it, do you recall? A. The last hatch, back on the rail, aft end, sitting on the rail.

Q. Probably come up out of the engine room to spell himself a bit?

Trial Examiner Leff: What is that?

Mr. Belkin: To rest.

Trial Examiner Leff: Is that a nautical expression?

Mr. Belkin: Not necessarily.

The Witness: I don't know what he was doing there, whether he was on or off watch, I don't know.

Q. (By Mr. Belkin): How near the mess room is the last hatch where Lee and you sat and talked? A. About fifty feet, I would say.

Q. And from the dining room? A. Must be about a hundred feet from the dining room.

Q. Captain Brinker testified that it was about twenty, twenty-five feet from the mess room. You wouldn't deny that that was so?

Mr. Ray: I object.

Trial Examiner Leff: Twenty-five feet from where to where?

Mr. Belkin: From the last hatch to the mess room.

Trial Examiner Leff: The question may remain. This is cross examination.

The Witness: It is the width of the boiler room. I don't know how long the boiler room is.

Q. (By Mr. Belkin): Might be closer to twenty-five feet than fifty? A. I didn't measure it.

Q. It isn't too important. A. Captain Brinker should know more about it than I do.

Q. Let's get back to your conversation with Mr. Lee. What, if anything, did you say to Lee on the last hatch and what, if anything, did he say to you about rotary shipping? A. Just talked about it.

Q. What did you say? A. I thought I should have a job. When the war was over they wouldn't use much iron ore and I thought I should have a job. What he said was the company was going to give us a standby wages, that was his argument and I said I didn't think so.

Q. Did any member of the crew participate in your conversation? A. No.

Q. The men were working on deck at the time? A. There were no men around there, just the two of us.

Q. Did you discuss this pamphlet "N.M.U. Fights Jim Crow" with Mr. Lee at any time? A. No, I don't think so.

Q. You testified in response to a question by Mr. Ray that when the mail came aboard it was sorted out into three departments, then you say, "we took the mail back ourselves or sometimes the deck watch does." A. Yes.

Q. That is right, isn't it? A. That is right.

Q. How often did you take the mail back? A. That depends on what the conditions were. If it was foggy or something like that, we couldn't leave forward.

Q. Otherwise you or the deck watch would take it back? A. Whoever was on watch.

Q. You would then leave it with each department of the ship, either in the galley, forward end or aft end? A. That is right.

Q. I suppose you take a bundle of the stuff back? A. Yes.

Q. You say you remember the speech of Congressman Bradley coming in a letter? A. That is right.

Q. What size of a letter? Ordinary size we use in sending letters. A. It was a large ordinary envelope, large sized envelope.

Q. Large sized envelope? A. Yes.

Q. Brown or white paper? A. I think brown, I am not sure though.

Q. About how large would you say? A. Regular standard size envelope. That is what I got in mind.

Q. Standard size, the kind you send correspondence in when you write letters? A. No, one of those large envelopes.

Trial Examiner Leff: You drop your voice.

The Witness: There are two standard sized envelopes, one size used for correspondence, one for business.

Q. (By Mr. Belkin): This is sort of a business envelope? A. That is right.

Q. When you received this envelope, did you know that Congressman Bradley's speech was in it? A. I didn't know what was in it when I received it till I opened it up.

Q. And you took the mail back with the letters including the speech of Congressman Bradley to the various departments for distribution not knowing what was in them, isn't that so? A. Yes.

Q. And you left some of these letters and other mail in the galley, didn't you? A. Well, that is what we do with the mail, leave it in the galley. We hand it to the cook if the cook is there getting supplies.

Q. Then you took some of those letters including Bradley's speech, including those containing Congressman Bradley's speech, to the forward end, didn't you? A. Yes, I suppose.

Q. And you took some back to the engine crew, didn't you? A. Yes.

Q. You said mail that came aboard the ship was not addressed to Third Mate King or First Mate John Smith but was addressed to the third mate or first mate, was it not? A. Yes.

Q. And that was also the case with the unlicensed personnel's mail, was it not? A. When you get form letters that is the way they are usually addressed.

Q. Letters like the Bradley speech came that way? A. They came addressed to the wheelsman, watchman.

Q. And the pamphlet "N.M.U. Fights Jim Crow" was addressed the same way, was it not? A. Yes, it was.

Q. Were you ever present at any of the conversations concerning the union that Captain Brinker said he had with Mr. Lee? A. No, I was never present on any conversation about the union.

Q. You know he did have such conversations, don't you, Mr. King? A. I never heard him talking about it, no. Just hearsay, that would be all it would be.

Trial Examiner Leff: What was the hearsay?

The Witness: Around the boat there was a crew of men and they would have to have something to talk about and they would talk about Captain Brinker and Lee.

Trial Examiner Leff: What did they say about them?

The Witness: That they were talking about the union.

Trial Examiner Leff: The men said Lee and Brinker were talking about the union?

The Witness: Yes.

Q. (By Mr. Belkin): In this hearsay or scuttle butt, isn't that what you call it, scuttle butt? A. Not on fresh water.

Q. What do you call it on fresh water? A. Gossip.

Q. Well, in this gossip they reviewed what Brinker said to Lee and what Lee said to Brinker?

Mr. Ray: Objection on the ground that it is obviously hearsay.

Trial Examiner Leff: Yes, it is obviously hearsay, but we are not precluded from receiving hearsay evidence and there is certain hearsay evidence that does have probative value and this does in view of the testimony previously given. Overruled.

Mr. Ray: Wait a minute.

Q. (By Mr. Belkin): I shall reframe the question. Will you review for us what the gossip or scuttle butt or hearsay said about or gave you concerning what Mr. Lee said to Captain Brinker and what Captain Brinker said to Mr. Lee?

Mr. Ray: Objection.

Trial Examiner Leff: Overruled.

The Witness: That is like gossip you hear at home. You hear it one day and forget it the next day.

Q. (By Mr. Belkin): Tell us the best you can remember. A. I don't remember.

Q. Let us go over some of the issues. Captain Brinker testified yesterday or the day before that he discussed the rotary shipping list with Mr. Lee. What was the gossip aboard the ship as to what was said by Lee to Brinker and by Brinker to Lee?

Mr. Ray: Just a minute. Mr. Trial Examiner, I interpose an objection to all this line of testimony.

Trial Examiner Leff: The objection is noted and overruled.

Mr. Belkin: We have had the same objection three times.

Trial Examiner Leff: He has a standing objection.

Mr. Belkin: Mr. Ray knows he has a standing objection to everything.

Trial Examiner Leff: He knows of no such thing because the trial examiner knows of no such rule. Please proceed.

Mr. Belkin: He has a standing exception.

Trial Examiner Leff: He has to make the objection first and get a ruling before he can get an exception.

Mr. Belkin: What I am objecting to is the interruption of the cross examination without the need.

Trial Examiner Leff: He has the right.

Mr. Belkin: All right, let us continue.

Mr. Ray: Let's see if he is actually indignant.

Trial Examiner Leff: He is smiling.

Q. (By Mr. Belkin): Now, in all seriousness, Mr. King, I want you to tell us what came to you, as having been said by Brinker to Lee and by Lee to Brinker about rotary shipping. A. That is gossip and I just—the only thing I

know about is that Brinker wanted his cook and in rotary shipping he couldn't keep him. He had this cook for quite a few years. He got along good and he liked him. That is all I remember about the arguments they had about rotary shipping. What they were talking about mostly was their cook.

Q. Mr. King, you testified a while ago that this is one issue you were much interested in personally. A. As far as my job is concerned, yes.

Q. You are interested in your job? A. Sure.

Q. It means your bread and butter? A. Naturally.

Q. So anything that involves that is vital to you and you want to remember it, isn't that right? A. No, it didn't involve me, I wasn't in on the conversation.

Q. I don't say that you were in on the conversation, but this conversation on rotary shipping was of interest to you. A. I talked to Lee about it.

Q. Do you want us to believe, and is it your sworn testimony, that all you remember about the conversations of Mr. Lee and Captain Brinker on this very vital issue as far as you are concerned was only about the cook?

Mr. Ray: I object to the question as argumentative.

Trial Examiner Leff: Overruled.

The Witness: I didn't hear any conversation between Lee and Brinker.

Q. (By Mr. Belkin): I am not saying that. A. Just gossip.

Q. Do you want us to believe that all the gossip you remember is just about the cook? A. That is all I remember.

Q. Nothing else? A. No.

Q. Just take a minute or two and think the matter through and see if you can't recall something else. A. It was just gossip on the boat.

Trial Examiner Leff: Let me see if I understand you. You do recall that other things were said but you cannot now remember what it was?

The Witness: That is right. It was a year and a half ago and it didn't affect me and I didn't listen to the conversation, how should I remember what was and what wasn't said.

Trial Examiner Leff: Let's go on, Mr. Belkin.

Q. (By Mr. Belkin): Mr. King, did you at any time hear anyone tell you about conversations between Captain Brinker and Mr. Lee on the negro issue?

Mr. Ray: I object to that question as repetitious. Mr. Belkin has asked this witness the same question at least half a dozen times.

Trial Examiner Leff: I do not recall this particular question. He asked him a general question and the witness said that certain things were said but he could not recall anything specifically other than that there was gossip aboard the boat relating to conversations between Brinker and Lee on the rotary hiring question. Now Mr. Belkin is trying to search the witness' memory by directing his thoughts to specific things. I think he is entitled to do that.

Mr. Ray: For five or six times the witness has asserted that the only thing he remembers is about the cook.

Trial Examiner Leff: Your objection is noted and is overruled.

Q. (By Mr. Belkin): Will you answer my question. A. Was that the negro question?

Q. Yes. A. No, I don't remember.

Q. You say you received the pamphlet "N.M.U. Fights Jim Crow." A. Yes.

Q. Did you read it? A. Sure I read it.

Q. And you distributed the mail to the different departments of the ship which contained copies of this pamphlet, did you not? A. Yes, I did. Well, I wouldn't say that. The mate on watch does it. It might have been me or the other mate.

Q. Yes. Then you knew that every member of the crew had a copy of the pamphlet "N.M.U. Fights Jim Crow"? A. Yes.

Q. That they had read it and you had read it, probably? A. I don't know if they read it or not. I did, but whether they did or not, I don't know.

Q. Whether they—

Mr. Ray: I—

Trial Examiner Leff: Wait a while. Have you got anything to say, Mr. Ray?

Mr. Ray: All right.

Q. (By Mr. Belkin): In view of the fact that you knew that each member of the crew had a copy of the pamphlet and that you had read it, do you want us to believe that at no time had you discussed this question with any of the members of the crew in the same manner you discussed other topics? A. I wouldn't know. No, I don't remember discussing it with anyone.

Q. Do you remember being present at any time when other people discussed it? A. No, I don't remember.

Q. And you want us to believe, and it is your sworn testimony, that at no time while you were present aboard the ship did anyone discuss this issue? A. Sure, they all got the pamphlet and discussed it. I don't remember, though, that was a year and a half ago.

Q. I understand— A. There were thirty-six men on the boat, they would have to have something to talk about. I suppose they would be talking about it. I can't remember any particular case where they talked about the pamphlet.

Q. But you do remember them discussing this issue? A. No.

Q. Didn't you just tell us you knew it was discussed aboard the ship? A. Not in my presence, I don't remember if they discussed it or not.

Q. You want us to believe that while you were on board the ship no one discussed this thing in your presence? A. I don't say that, I said I don't remember.

Q. You don't deny they discussed it? A. No, they probably did.

Q. In other words, they most probably did discuss this question in your presence? A. I don't remember any particular place or time they discussed it.

Q. I understand that, but you have a recollection that it was discussed but you can't remember any particular place, is that right? A. Yes.

Q. And do you also recollect that while this issue was being discussed in your presence, your taking a part in the question.

Trial Examiner Leff: In the discussion.

Q. (By Mr. Belkin): In the discussion? A. No, I don't remember.

Q. So you want us to believe that while this question of the Jim Crow issue was being discussed aboard the ship in your presence that you took no part in the discussion—

Mr. Ray: Wait a minute.

Trial Examiner Leff: Let him finish.

Q. (By Mr. Belkin): Although at other times you discussed other issues?

Mr. Ray: Now, if the trial examiner please, there is no testimony on the record that he was present when the discussions were being had and I object to the assumption on the part of Mr. Belkin that he was present, and I object to the form of the question. I want to be heard.

Trial Examiner Leff: Read the question.

(Question read by reporter.)

Mr. Belkin: May I point out to the trial examiner that the witness has already testified that he recalled this matter being discussed in his presence, although he remembered no particular instance. You may make your decision.

Trial Examiner Leff: My recollection is that the witness testified three different ways on that point. My notes so indicate. He said first that it was discussed, then he said it was not discussed in his presence, then he said it may have been discussed in his presence but he does not remember the details or the circumstances. I am going to allow the question.

Q. (By Mr. Belkin): Will you answer, Mr. Witness? A. What is the question?

Trial Examiner Leff: Read the question.

(Question read by reporter.)

The Witness: I didn't recall any discussions I ever had on it. It was discussed, no doubt. When you come aboard a boat you are there twenty-four hours a day and if anything like that comes aboard, you would naturally discuss it, but I don't remember.

Q. (By Mr. Belkin): In other words, you probably did discuss this issue with the crew, isn't that right? A. I don't know if I discussed the issue. I talked about the pamphlet coming aboard, to whom I don't remember.

Trial Examiner Leff: To members of the crew?

The Witness: I don't remember anything about talking about it to anyone.

Q (By Mr. Belkin): Didn't you just testify that you do remember discussing it but you don't remember to

whom? A. It came aboard, no doubt we talked about it. We are there twenty-four hours a day, no doubt we talked about it, but I don't remember what I said, I don't remember who I talked to.

Q. You are not on trial, it isn't a mortal sin to talk about things aboard a ship. What we want is the truth and the facts as you recall them.

Mr. Ray: I object to that fatherly statement about a mortal sin.

Trial Examiner Leff: We all admit it might not be a mortal sin.

Mr. Belkin: This is part of the questioning. I don't think I ought to be interrupted in the course of framing questions.

Mr. Ray: I insist on the right to interrupt.

Q. (By Mr. Belkin): Now, Mr. King, when this pamphlet came aboard and you discussed the fact that it had, what, if anything, did you say about it? A. I just told you I don't remember saying anything in particular.

Q. Not in particular, but what was the gist or sum of what you said?

Mr. Ray: Wait a minute. Mr. Trial Examiner, I realize that counsel should be given a fair leeway in cross examination, but Mr. Belkin is extending this examination beyond all reasonable length. He has gone over it at least half a dozen times. I object as it is repetitious.

Trial Examiner Leff: Hasn't time ceased to be a matter of great importance in this case?

Mr. Ray: The witness himself is being subjected to constant repetition and the record should not be enlarged by useless repetition.

Trial Examiner Leff: Overruled.

Mr. Belkin: Read the question.

(Question read by reporter.)

The Witness: Just what I said, I suppose it was discussed when it came aboard the boat. They are there twenty-four hours a day, everything that comes aboard is talked about naturally, but I don't remember what I said.

Trial Examiner Leff: You don't recall ever saying anything about it?

The Witness: No, I don't remember saying anything to anybody about it, must have talked about it, though, suppose it was talked about, everything that comes aboard the boat is talked about.

Trial Examiner Leff: But you have no idea what was said in substance?

The Witness: No.

Q. (By Mr. Belkin): What watch were you on? A. Third mate's, six to ten.

Q. That is while you were on the Filbert? A. Yes.

Q. Six to ten in the morning and six to ten at night? A. That is right.

Q. Do you recall at any time discussing the question of bonuses with the men in the spring of 1944, Mr. King? A. Spring of 1944?

Q. Any time last year? A. I must have discussed it, I don't recall it. The company sends out a letter sometime during the season telling about having a bonus but I don't recall.

Q. Do you recall what the company letter said about the bonus?

Mr. Ray: I would ask government counsel to specify the letter, and I object to the present form of the question.

Trial Examiner Leff: Objection overruled. The witness referred to a letter and he knows what letter he has in mind, I assume, and counsel is inquiring to determine what letter the witness does have in mind.

The Witness: It was a letter that came out stating that we are going to get the same bonus as we did the year before.

Q. (By Mr. Belkin): When did that letter come out? A. Sometime in the middle of the season.

Q. About May then? A. It must have been later than that.

Q. June?

Mr. Ray: If the trial examiner please, this is the first time to my knowledge that the question of bonus has arisen. I will ask government counsel whether they claim that any alleged letter sent out by the company containing a discussion as to bonuses is unfair labor practice—is alleged to be an unfair labor practice.

Mr. Belkin: This is not the first time the question of bonuses has come up, Mr. Examiner.

Trial Examiner Leff: There is some testimony in the board's direct case about bonuses as I recall it. Overruled.

Q. (By Mr. Belkin): I was trying to find out from you when this letter was written, but you obviously don't recall it, so I shall not press it, Mr. Witness. What was the bonus set up by the company? A. As far as I know, the unlicensed men got ten per cent bonus and the letter came out for us that we were going to get the same bonus we had the year before.

Q. This bonus was the option of the company, was it not? By that I mean they had power to grant it or reject it, as they pleased, isn't that true? A. I guess so, as far as I know.

Q. That was your impression? A. That was my impression.

Mr. Belkin: That is all I have.

CROSS EXAMINATION.

Q. (By Mr. Rosenfeld): Mr. King, when did you first go to work for the Pittsburgh Steamship Company? A. 1931.

Q. What rating? A. Deckhand.

Q. And have you stayed there steadily ever since? A. No, I was off, I didn't go to work again till 1935.

Q. And from 1935 to 1943? A. In 1935 I was off and 1938 again. 1935, 1937 and 1939 to now.

Q. And what did you do in the period you were off? A. I didn't do anything. There was nothing to do. It was depression.

Q. When you came back to work for the company this last time, what year was that, 1939? A. 1939.

Q. What rating did you come? A. Wheelsman.

Q. How long did you remain a wheelsman? A. 1939, 1940, 1941 and two-thirds of 1942.

Q. Then you didn't get a job as a third mate until sometime in 1942? A. That is right.

Q. And you have been steadily employed by the Pittsburgh Steamship Company since? A. Yes.

Q. In the navigation season? A. In the wintertime,

Q. Where? A. In the port of Milwaukee.

Q. How many ships were laid up in the Milwaukee in the winter time? A. That is a government secret. Nineteen Pittsburgh boats.

Q. How many watchmen were employed?

Mr. Ray: I object to this question.

Trial Examiner Leff: I don't see how it is relevant.

Mr. Rosenfeld: I just want to know something about this man's connection with the company.

Trial Examiner Leff: You are not only asking about his connection with the company, you are asking about the boat situation and everything else.

Mr. Rosenfeld: I want—

Trial Examiner Leff: It might be interesting information but I would like to know what it has to do with the issues of this case.

Mr. Rosenfeld: I won't press the situation.

Q. (By Mr. Rosenfeld): Now, I think you testified that on a number of occasions you learned from the men that Lee had approached them to join the union, is that right? A. Well, that is their story, whether they are telling the truth or not, I don't know.

Q. But they did say something to you? A. That is right.

Q. Do you remember how many men told you that? A. No, I don't.

Q. When did you learn for the first time that this had happened? A. Before we left the fit-off dock. Before we started to sail in the spring.

Q. Before you started to sail in the spring the men had told you Lee was trying to get them to join the union? A. That is right.

Q. Did this keep up? A. As far as I know it did.

Q. Did men continue telling you? A. Yes.

Q. Now, do you remember the ratings of these men? A. Well, most of them were young men starting in and didn't have a rating, just had a book. Firemen, oilers and everything else, all just ordinary seamen and coalpassers.

Q. That included deckhands, too? And under what circumstances did they tell you that Lee had asked them to join the union? A. I can't recall that.

Trial Examiner Leff: Keep your voice up.

The Witness: I can't recall that. They didn't tell me. Maybe I was standing there drinking coffee. They were talking to somebody else.

Q. (By Mr. Rosenfeld): You don't know whether they told you or you overheard them talking to somebody? A. That is right.

Q. Where? In the dining room? A. No, not in the dining room. When drinking coffee at ten o'clock or midnight lunch.

Q. Now, had you heard of the National Maritime Union before the 1944 season? A. Sure.

Q. You knew about it when you joined the Filbert in 1944? A. Yes.

Q. You knew something about its policies? A. Yes.

Q. What did you know about its policies in 1944 when you joined the Filbert? A. I don't know when I learned about those policies.

Q. What did you know about its policies in 1944 when you joined the Filbert? A. I knew of rotary shipping, that was one of their programs.

Q. What else? A. I can't say. I know Curran was the head of it. I don't remember what I knew in 1944, in the spring, a certain day. I had been reading the Pilot for four, five years.

Q. In reading the Pilot for four or five years, you learned more about it than that rotary shipping was one of its policies and that Curran was the president?

Mr. Ray: Mr. Trial Examiner, I object to that question as clearly argumentative and statement by counsel as to what this witness believes, and I object to the question on the further ground that the belief of this witness, unless it takes an affirmative expression in an overt act, unless it is expressed in speech which would affect the unlicensed personnel, is wholly immaterial.

Trial Examiner Leff: This question does not ask for his belief, he is merely searching his memory. It is somewhat argumentative in form, but many questions in cross examination are. I will permit it, but I do not know where this whole line of questioning is leading him.

Q. (By Mr. Rosenfeld): Will you answer the question? A. What was the question?

Mr. Rosenfeld: Read the question.

(Question read by the reporter.)

The Witness: I don't know much about it. I know they had a no-strike for the duration of the war.

Trial Examiner Leff: Put in the word pledge, a no-strike pledge for the duration of the war.

Q. (By Mr. Rosenfeld): Anything else? A. No, not that I recall.

Q. That is all you know about it? A. That is about all I know about it.

Q. Now, is it a fact that you learned about rotary shipping from the Pilot? A. Yes.

Q. Did you hear about it from any other source? A. No, I don't suppose I did.

Q. You heard no one outside of Scotty Lee, to whom you spoke, you heard no one else discuss the thing? A. No.

Q. I see. You are sure of that? A. I said no.

Mr. Rosenfeld: That is all.

Trial Examiner Leff: Any further questions?

RE-DIRECT EXAMINATION.

Q. (By Mr. Ray): Mr. King, did or did not the Pilot come aboard the Filbert during the 1944 season? A. Yes, it did.

Q. Do you recall how that publication was received aboard the vessel and how it was distributed? A. It came by mail, and sometimes they got a bigger bundle than others, sometimes it came addressed to the vessel, sometimes addressed to the firemen, coalpassers, wheelsmen and others, sometimes addressed to the individual watch, like ten to two firemen, six to ten wheelsmen.

Q. How would it be distributed physically? A. If it came through the mail, it was distributed like the rest of the mail.

Mr. Ray: That is all.

Trial Examiner Leff: Any further questions?

RE-CROSS EXAMINATION.

Q. (By Mr. Belkin): As a matter of fact, Mr. King, quite often the Pilot is brought aboard the ships by the organizer? A. Not on our boat.

Q. Not on your boat? A. They don't get on our boat that way, the organizers don't bring them.

Q. Didn't Lee bring Pilots aboard? A. When do you mean?

Q. Often times. Men don't have to be organizers either. A. No, you can get them in a dry goods store. They bring them aboard the ship.

Mr. Ray: If it comes in the mail, it is distributed as you say?

The Witness: If it comes in the mail.

Q. (By Mr. Rosenfeld): When it comes aboard as mail, how is it wrapped? A. The individual Pilots are wrapped in white paper, usually with the address on the outside.

Q. Anything else on the wrapper? A. Not that I recall, no.

Mr. Rosenfeld: That is all.

Mr. Ray: No further questions.

Trial Examiner Leff: Did you receive a copy of "N.M.U. Fights Jim Crow" personally?

The Witness: Yes, I think I did.

Trial Examiner Leff: How was it received, through the mail?

The Witness: Through the mail.

Trial Examiner Leff: Did you ever receive any other literature from the N.M.U., through the mail addressed to you personally?

The Witness: None of it is addressed to me personally. It is addressed as third mate of the boat.

Trial Examiner Leff: Did you ever receive any such mail from the N.M.U.—did you ever receive any literature from the N.M.U. addressed to you personally?

The Witness: It wasn't addressed to me personally, it was addressed as third mate of the steamer Filbert.

Trial Examiner Leff: Yes, that is what I mean. You were the only third mate on the steamer Filbert?

The Witness: Yes.

Trial Examiner Leff: Can you recall any union literature that was addressed to you personally other than the pamphlet or leaflet "N.M.U. Fights Jim Crow"?

The Witness: We got some union literature but I don't recall if it was S.I.U. or N.M.U. that sent it.

Trial Examiner Leff: Can you recall any specifically that purported to be N.M.U. literature?

The Witness: No, whether it was S.I.U. or N.M.U., I don't know.

Trial Examiner Leff: Did you receive regularly in the mail the Pilot from the N.M.U.? Did you ever receive the Pilot addressed to you or addressed to the third mate aboard the Filbert?

The Witness: No, I don't think so.

RE-DIRECT EXAMINATION.

Q. (By Mr. Ray): Mr. King, did you or did you not receive a letter addressed to the third mate on the steamer Filbert from Mr. Jack Lawrenson, vice-president of the N.M.U., telling the officers what they should do and what they should not do in the coming election? A. I received some kind of a letter.

Q. You received some kind of a letter you say? A. Yes.

Trial Examiner Leff: What was it?

Q. (By Mr. Ray): Do you recall whether or not it was from Mr. Lawrenson?

Trial Examiner Leff: He didn't answer my question.

The Witness: I don't remember. We received some kind of a letter but who it was from or even what union it was from I don't know. We received literature.

Mr. Ray: Pardon me, I didn't hear that.

(Answer read by the reporter.)

Mr. Ray: Mr. Trial Examiner, you recall that when the hearing on the board's case was being put on, Mr. Lawrenson was requested, and the trial examiner ordered, that he present himself again for further cross examination and produce certain contracts. The respondent now asks that when Mr. Lawrenson does appear, that in addition to the contracts, he be required to produce any and all letters sent by the union, the National Maritime Union, to officers of the Pittsburgh fleet bearing on the coming election during the 1944 season.

Trial Examiner Leff: Will you produce that?

Mr. Rosenfeld: If any such letters were written, they will be produced.

Mr. Ray: No further questions.

Mr. Belkin: Of course, I think the board would like, and does ask, that all letters, in addition to those already offered in evidence, regarding this election, which were sent by the company to its personnel, both licensed and unlicensed personnel, be also produced.

Trial Examiner Leff: Will you produce them, Mr. Ray?

Mr. Ray: We will make an effort. If any letters were sent, they will be produced.

Trial Examiner Leff: Will you produce all letters that were sent as shown by the files and records of the company?

Mr. Hinslea: We will produce such letters if demanded.

Trial Examiner Leff: All letters are demanded.

Mr. Hinslea: Whatever the demand is.

Trial Examiner Leff: They want all letters addressed to the licensed and unlicensed personnel relating in any way to the union or the 1944 election.

Mr. Hinslea: That is right.

Trial Examiner Leff: The respondent has stated it will produce them.

Mr. Belkin: If Mr. Ray is through with re-direct, I would like to re-cross examine.

Mr. Ray: I am through with re-direct.

RE-CROSS EXAMINATION.

Q. (By Mr. Belkin): I am not quite clear on just how these N.M.U. pamphlets came aboard. Did they come aboard in a bundle? A. Well, if they came by mail, the mail comes aboard in a bundle, yes. Or else in a bag. Sometimes one way, sometimes the other.

Q. In other words, all mail comes in a bag. Now, out of the mail bag, at the time you would receive the mail, was there a bundle of N.M.U. pamphlets?

Mr. Ray: I object to the question unless Mr. Belkin specifies a particular time and specifies the particular pamphlets.

Q. (By Mr. Belkin): You testified—

Mr. Ray: Wait a minute.

Trial Examiner Leff: He probably will clear it up.

Mr. Belkin: I am trying to. The witness has testified it came aboard, I believe at the Soo.

Mr. Ray: What came aboard?

Trial Examiner Leff: I am not clear here what came aboard.

Q. (By Mr. Belkin): The pamphlet "N.M.U. Fights Jim Crow" came aboard the ship sometime in the spring of 1944, isn't that true, Mr. King? A. Yes, they came aboard.

Q. And to the best of your recollection, they came aboard, as you claimed, at the Soo? A. They came aboard as mail. That is where we get our mail, at the Soo.

Q. Now, you testified that in the mail bag—strike that. You testified that there was a mail bag containing these pamphlets, "N.M.U. Fights Jim Crow," didn't you, Mr. King? A. I don't know whether it was a bag or not. There was a bundle.

Q. In a bundle? A. Bundle or bag. Sometimes they don't put it in a bag.

Q. I just want to know one fact, if you will be good enough to help us out, and that is just how were these pamphlets wrapped? A. The way I recall it, they came in an envelope, like a letter, ordinary envelope.

Q. In other words, these pamphlets came aboard under a separate cover, each in a separate envelope, is that correct? A. T at is the way I recall it.

Trial Examiner Leff: Did they come aboard in a mail bag?

The Witness: In a mail bag.

Trial Examiner Leff: A United States Government, post office mail bag?

The Witness: No, just a paper bag, like sugar comes in.

Trial Examiner Leff: Like sugar comes in. Is all the mail wrapped that way?

The Witness: Either in a paper bag or with a string around it.

Q. (By Mr. Belkin): Who puts the mail in that bag?

Mr. Ray: I object.

The Witness: I don't know who puts it in the bag.

Trial Examiner Leff: What is the objection?

Mr. Ray: I object to the question on the ground—strike that. I would like Mr. Belkin to explain whether he means when it is put in the bag before it arrives aboard the vessel or on the vessel.

Mr. Belkin: If there is a necessity for me to explain it. I don't know what the necessity is. I shall reframe it, though.

Q. (By Mr. Belkin): Do you know in any way just who puts the mail in the paper bag in which it comes to your vessel? A. No, I don't.

Q. You don't know whether that is done by the United States Government or by the company or anyone else? A. It comes off the supply boat and I don't know—

Q. You don't know how it gets to the supply boat? A. No, I don't.

Mr. Belkin: That is all.

Trial Examiner Leff: I hope that before this procedure is finished, testimony on that will be introduced.

Mr. Belkin: I can't introduce it because the board has no way of checking the source of the mail or the procedure by which it comes aboard the ship. That is why we are cross examining on the question. Certainly the supervisors or officers of the company should know.

Trial Examiner Leff: I assume that the respondent will produce evidence on that.

Mr. Ray: No further questions.

Mr. Rosenfeld: No more questions.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Mr. Ray: There are no further witnesses this morning.

Trial Examiner Leff: When will the next witness be available?

Mr. Ray: I will have to check and see what the situation is.

Trial Examiner Leff: Off the record.

(Discussion off the record.)

Trial Examiner Leff: On the record.

Mr. Ray: Mr. Trial Examiner, as near as we now know, the next witnesses will be available at 12:30 a.m.

Trial Examiner Leff: How many will you have?

Mr. Ray: We estimate probably half a dozen. There may be one or two more or one or two less, but we expect around half a dozen.

Trial Examiner Leff: That may be a four-hour session.

Mr. Belkin: Half a dozen witnesses may take all night. I would like to have, if possible, the counsel for respondent give us a picture beyond tonight. What is going to happen after tonight? When are we going to finish up? I would like to get some idea. I think it is only fair to give it to us, Mr. Hinslea.

Trial Examiner Leff: I am sure Mr. Hinslea has no objection.

Mr. Hinslea: As far as I can tell, it looks like an all night session tonight and maybe tomorrow morning with an adjournment for breakfast. That all depends on the length of the cross examination.

Trial Examiner Leff: Putting the onus on the board again.

Mr. Ray: I would like to object to that.

Mr. Hinslea: I assure you the direct examination will be very snappy.

Mr. Belkin: That isn't what I mean.

Mr. Hinslea: Tomorrow is Labor Day, is it not. There is a possibility of one ship in tomorrow, I am not sure of that, and Tuesday, there is a possibility of three ships Tuesday night but we haven't got confirmation on that.

Mr. Belkin: That would be Tuesday evening?

Mr. Hinslea: Tuesday evening. That is going to leave us with four or five ships that are not available and won't be available for a week or ten days, which would mean sitting here in Duluth and we are going to move for an adjournment to take further testimony.

Trial Examiner Leff: I would like to ask one question. Were those four or five ships you refer to in the port of Duluth here at all since we began the hearing?

Mr. Hinslea: Two of them were here on Tuesday the 28th, when the reporter didn't show up, and we lost one the other night at Two Harbors which we could not arrange to meet, and one in Calcite, trading in Lake Michigan.

Trial Examiner Leff: Will you get us the names of the ships and the witnesses?

Mr. Hinslea: No, I don't know that I have to give the names of the witnesses in advance. I have never been asked to do that.

Trial Examiner Leff: What is the objection?

Mr. Hinslea: There are lots of objections. I assume my statement will be taken at face value.

Trial Examiner Leff: That is not the point, but if there is going to be an application for adjournment, and indication has been made that there will be and that the application will be contested, I think all that information should be given in support of the application for adjournment.

Mr. Ray: The names of the witnesses?

Trial Examiner Leff: If you are seeking an adjournment.

Mr. Hinslea: I have spent the entire thirty days investigating and I might say to you there are at least eight or ten unlicensed seamen involved in this case on outside boats that I have not had the opportunity to interview yet and I want that opportunity. The board and the union had one year to investigate this case and we were given only thirty days to investigate and go aboard thirty or thirty-five ships of the Pittsburgh Steamship Company involving over forty men. In addition to that we had shore witnesses to interview and we had unlicensed men who had left the employ of the Pittsburgh Steamship Company that we have not interviewed. The point we make is that any contest on postponement is entirely unfair in the light of the time that was given the government and the union to prepare their case.

Trial Examiner Leff: I don't want to have an argument on the application for postponement until such time as the application is actually made, but I do want to indicate that I think in fairness to everybody you should, in support of the application, be prepared to state full details so I may know how to rule. I am merely telling you at this time so we won't have to adjourn again for the purpose of enabling you to secure this information which I think is necessary.

Mr. Hinslea: I don't expect to be here when we adjourn so I want to include this now. I don't think we should be required to produce the names of any of the wit-

nesses. I have never been asked to produce the names of witnesses before and I don't intend to reveal it now. Some of them I don't even know their names.

Mr. Belkin: I don't think Mr. Hinslea understands the examiner's request. It is new to me, too. It is obvious that what the trial examiner wants is not to forewarn the board. We will make no attempt to check the witnesses, but it seems to me that you know that the board will oppose the application for adjournment and all the examiner is asking you to do, as I understand it, is that you furnish a list of the witnesses that are not available to substantiate that application for adjournment.

Trial Examiner Leff: If you say these witnesses are not available, I want the board and the CIO to be able to argue the question as to whether these witnesses were or were not available during the time of our stay in Duluth.

Mr. Hinslea: We will give the names of the ships but not the witnesses.

Trial Examiner Leff: We should at least have the names of the ships and a statement as to whether or not the witnesses are licensed or unlicensed personnel. I am trying to conclude this hearing as expeditiously as possible.

Mr. Hinslea: I am also advising you that the whereabouts of the unlicensed men that I expect to produce are not known as they are not in the employ of the Pittsburgh Steamship Company so I cannot tell you whether they were in Duluth or not.

Trial Examiner Leff: Those witnesses will be subject to subpoena. Our reasons for going out of our way to a place far removed from the regular place of hearing to take the testimony of certain witnesses who are members of the licensed personnel does not exist in the case of the unlicensed personnel.

Mr. Hinslea: I am making this statement because I will not be here when we adjourn. On the 17th of August I had a conference with Mr. Belkin as to the question of whether we would be able to finish our case at Duluth and Mr. Belkin was advised of the difficulty we were having in reaching our witnesses. I sent him a letter as to my understanding of the conference, and it was a clear picture and the letter could be put in the record, that it would be im-

possible to complete our session at Duluth and he agreed to it.

Trial Examiner Leff: Let the record show that that letter was not submitted to the trial examiner and that he did not see it until Mr. Hinslea showed him a copy of the letter yesterday. That was the first occasion that I had seen it. When I refer to the letter I don't mean to imply that the letter contained all the matter that you ascribe to it.

Mr. Belkin: I want the record to show this, that in my conference with Mr. Hinslea on the 17th of August, Mr. Hinslea stated to me that he was having a great deal of difficulty reaching witnesses, that he had spent considerable time in Duluth prior to our conversation, that he was going to attempt to finish the case in Duluth but he didn't know if he could or not, in fact he indicated that he wasn't going to put on all the people that he possibly might in support of his position. The purpose of the meeting originally was to obtain a schedule from Mr. Hinslea as to how the hearing would go on. Mr. Hinslea said he could not give me such a schedule, that he did not know when the boats would arrive. On behalf of the board I did all I could and made no objection to this procedure. I was quite willing and still am to spend any hour but at no time did I make any agreement with Mr. Hinslea that I would accede to a request for an adjournment after we came to Duluth beyond one immediately thereafter in Cleveland. Mr. Hinslea said he might have to take a few bites elsewhere and on that I made no commitment whatsoever because the question of adjournment is not in my jurisdiction but in that of the trial examiner.

Trial Examiner Leff: I don't want an argument on that question at this time. I simply referred to it at this session because I had been forewarned that an application for adjournment was forthcoming and because I wanted information on that at the time the application is made, I want detailed information showing the necessity of any further adjournment. If an adjournment does appear to be in order, I should like to arrange it so that all further witnesses can be called at one further session of this hearing.

Mr. Hinslea: May I ask the examiner to ask Mr. Belkin if he has the original letter with him that I wrote to him.

Mr. Belkin: I don't know, I doubt it.

Mr. Ray: I will show you what purports to be a copy of the letter.

Trial Examiner Leff: There is no application for adjournment now. You can put it in the record at the time the application is made.

Mr. Hinslea: Except, Mr. Examiner, I don't expect to be here when we adjourn and I am the writer of the letter. Mr. Ray did not write the letter.

Trial Examiner Leff: I am sure Mr. Belkin will agree that is a true copy of the letter.

Mr. Belkin: I will add that upon receiving this letter, I notified the trial examiner of the situation at that time. I said to him in my memorandum regarding this question that I could not agree to the postponement.

Trial Examiner Leff: A memorandum which I incidentally never received. The hearing is adjourned to 12:30 tomorrow morning at the Hotel Duluth. We will meet in the lobby.

(Whereupon, at 12 noon the same day, the hearing was adjourned to 12:30 a.m. September 3, 1945.)

Hotel Duluth
Duluth, Minnesota
Monday, September 3, 1945

The above entitled matter came on for hearing, pursuant to adjournment, at 12:30 a.m.

(Appearances omitted.)

Trial Examiner Leff: The hearing is in order.

DONALD C. LAWLESS, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?

The Witness: Donald C. Lawless.

Trial Examiner Leff: What is your address?

The Witness: Vermillion, Iowa.

DIRECT EXAMINATION.

Q. (By Mr. Hinslea): What is your occupation? A. Ship master.

Q. Whom are you employed by? A. Pittsburgh Steamship Company.

Q. What ship are you on? A. Steamer Cornell.

Q. What capacity? A. Captain.

Q. In 1944 what ship were you on? A. Robert W. E. Bunson.

Trial Examiner Leff: As captain?

The Witness: That is right.

Q. (By Mr. Hinslea): Captain, do you know a seaman by the name of Vogt? A. I do.

Q. What ships have you had him on? A. Steamer Bunson and Cornell.

Q. What capacity? A. As watchman. Part of the time he was wheelsman on the Cornell.

Q. Do you remember, was he with you on the Bunson in 1944? A. That is right.

Q. Do you know about how long he was with you? A. About five or six weeks.

Q. What part of the season? A. From October on to lay-up.

Q. And you laid up in December? A. We laid up in November but then he was there after that because he finished lay-up of the aft end also.

Q. When did you first meet or talk with Vogt, if you remember? A. I met him at the gate in Fairport in 1944, along about the first of October.

Q. What is the fact as to whether or not, when you met him at the gate at Fairport, you asked him whether or not he belonged to a union? A. I did not.

Mr. Rosenfeld: I want to object to any leading questions of this kind. I think the witness should be asked to give the substance of the conversation.

Trial Examiner Leff: How can he deny it unless he asks him.

Mr. Rosenfeld: He should be asked, not given the answer.

Trial Examiner Leff: Overruled.

Q. (By Mr. Hinslea): At the time you met Vogt at the gate at Fairport there, I understand you talked with him, is that right? A. I did.

Q. Did you say to him, "Well, I don't think much of the N.M.U. or the CIO"? A. I did not.

Q. And did you say to him at the same time, "Well, they are a bunch of communists and Jews"? A. I did not.

Q. State whether or not you advised him that the membership of the N.M.U. or CIO were just agitators? A. I did not.

Q. Now, referring to—strike that. Did you have any conversation with Vogt while he was on the steamer Bunson with reference to the union and more specifically with reference to the N.M.U.? A. Yes, I did.

Q. Now, at that time, did you state that the N.M.U. is controlled by communists and Jews? A. I did not.

Q. Did you state that if the lake boats are organized there will be a bunch of niggers down here and you will have to work with them? A. No, I did not.

Q. What was the substance of your conversation with Vogt? A. As I recall, I went up into the pilot house one evening to check on position and Vogt and the wheelsman and third mate were in a discussion on the approaching election—that is, the presidential election, and after I had listened for some time Vogt brought up the subject of unionism and during the conversation I said I thought the union was making a mistake by showing all the pictures of the negroes working and living with the white crews and I thought that the men on the lakes weren't ready for that sort of thing, and Vogt replied that we already have colored people in the galley. I said, "Yes, our crews are used to that, that is different than suggesting that they work and live with them."

Q. Was this a heated argument or was it not a heated argument? A. No, it was not a heated argument.

Q. Were you expressing your personal opinion when you made that statement? A. Entirely my personal opinion.

Mr. Belkin: Objection.

Trial Examiner Leff: Sustained.

Mr. Belkin: He has already answered and I move the answer be stricken.

Trial Examiner Leff: Is there an answer? I have reconsidered my ruling. I shall let it stand.

Mr. Belkin: What about my motion to strike?

Trial Examiner Leff: The motion is denied.

Q. (By Mr. Hinslea): Captain, was that the only conversation you had with Vogt that had anything to do with the union during his employment on the steamer Bunson? A. It was the only time that I spoke to Vogt about the union during his employment on the steamer Bunson.

Q. Now, coming to the spring of 1945, did you go to the ship as master of the steamer Cornell? A. That is right.

Q. And about, if you remember, when did the steamer Cornell leave for the season of navigation? A. 8 p.m. Easter Sunday.

Q. From what port? A. Conneaut, Ohio.

Q. Prior to your sailing, state whether or not there was a meeting called of the crew and the officers of the ship. A. There was.

Q. And where was that meeting held? A. In the fantail.

Q. Is that a compartment where the men can assemble? A. It is very large and clean on this ship.

Q. What was the purpose of this meeting, captain? A. To instruct the crews in their duties, to let them know what they could expect from me and what I could expect from them.

Q. What is the fact as to whether or not you had young beginners this season? A. I had a large percentage of men that had never been aboard a boat before.

Q. Now, did you act as chairman of this meeting? A. That is right, I took charge of the meeting.

Q. In talking to these men, what subjects did you discuss? A. I discussed safety first, rationing, the fact that we were going to give them every Saturday afternoon off except when the boat was lifting cargo, and that there would be no work except sanitary work on Sundays, that we would work seven and a half hours a day instead of eight hours, and on rationing I explained to them the amount of points we were allotted, what we could do with them, that we would try to get along as best we could with what the government allowed us.

Q. Now, did you make any statement at that meeting with reference to unions? A. Yes, I did.

Q. Just what did you say, in substance? A. I told them that there was a pending N.M.U. election and that nobody had to join the union to work upon this ship, or anybody who joined the union would not be discriminated against in any way, and at that time I said, as proof of my fair-mindedness on this thing, I have a man here, Robert Vogt, and I reached over and touched him on the knee, I said, this is a good man, I carried him last year and I re-employed him this year.

Trial Examiner Leff: Was that in the fit-out period of 1945?

The Witness: 1945.

Trial Examiner Leff: Was there an election pending in 1945?

The Witness: Supposedly.

Trial Examiner Leff: Is that a fact? Can counsel stipulate on that?

Mr. Belkin: I think we can bring that out before the close of the direct examination.

Trial Examiner Leff: As long as we get it into the record. I wasn't aware there was an election in 1945.

Mr. Hinslea: No, there was no official election.

Trial Examiner Leff: You can proceed.

Q. (By Mr. Hinslea): Now, that was all that you said about—discussed the union at any time. A. That is right and I named no union.

Q. Now, did the chief engineer also talk at this meeting? A. He did.

Q. Did you hear what he said? A. Yes, I did.

Q. Did he at any time mention the union? A. He made no remarks concerning the union by inference or direct quotation.

Q. Did he at any time refer to the union as being communists or Jews? A. He did not.

Trial Examiner Leff: What is his name?

The Witness: George W. Heckel.

Q. (By Mr. Hinslea): Did he say they were a bunch of agitators? A. He did not.

Q. You were there the entire meeting? A. That is right.

Q. Did anybody talk at this meeting besides you and the chief engineer? A. No, they did not.

Q. When you were on the steamer Bunson—going back to the Bunson—did you ever discuss with your forward officers the question of unionism? A. I didn't discuss the question of unionism with them but I had a conversation with my third mate that touched on unionism.

Q. Did you ever speak to the officers about—strike that out. Do you remember in 1944 that there was actually an election? A. There was, and prior to that election I had called my mates and advised them to take no part in discussions or show partiality for or against the union.

Q. Was Robert Carr one of your officers on the Bunson? A. He was my third mate.

Q. Did you, captain, ever hear while you were on the Bunson Carr of a man by the name of Scharmin argue or discuss the union? A. No, I did not.

Q. You said you had some discussion with Carr while you were on the Bunson. Just what was that? A. Carr came to me and asked me what my idea of rotary—not rotary shipping, but the fact that licensed officers could not bump any of the unlicensed men in the bad season, and he wanted to know where that put him. Well, the substance of the thing was that the third mate and the third assistant would be the ones that would have to go on dock, there is no lower rating which they could bump, and inasmuch as that left an opening for an unlicensed man there, why, in my judgment, that was pro-union propaganda, not anti-union.

Q. What advice did you give him when he asked you? A. I told him there is nothing he could do, just wait and see how it would work out and hope it worked out for the best.

Q. Do you know whether or not he discussed that subject with the third engineer? A. No, I couldn't tell you. The third engineer and he were room mates.

Q. He didn't tell you he had discussed it? A. No, he did not.

Q. Now, captain, Vogt left your ship sometime in 1945, this season? A. That is right.

Q. Do you know why he left the ship? A. Yes, he returned aboard the ship intoxicated—

Q. Where was that? A. South of Chicago, and after we got under way he come up and wanted his money. Obviously he couldn't get off, it was no sense in giving him his money there. I told him we would have his money ready for him south of Chicago.

Q. Where? A. In Escanaba.

Q. Did you pay him off? A. We paid him off in Escanaba.

Q. At that time was he signed on articles? A. Yes, he was.

Q. For what period? A. From the first of the month to the 26th.

Q. Did he get off before the terms of his contract? A. He did.

Trial Examiner Leff: How is this relevant?

Mr. Hinslea: To his veracity, credibility. He testified he got off because he was starving to death.

Trial Examiner Leff: It is credibility on a matter which the trial examiner deems immaterial to the issues of the case.

Mr. Hinslea: That is all.

Trial Examiner Leff: Your witness, Mr. Belkin.

CROSS EXAMINATION.

Q. (By Mr. Belkin): Captain, how many men are there aboard the Cornell? A. Thirty-six.

Q. That includes licensed and unlicensed? A. The entire personnel.

Q. How large a ship do you have? A. 454 feet long.

Q. Are you, as captain, responsible for all orders and instructions given the crew? A. To a large extent.

Q. Does anyone else have that responsibility? Or share it with you? A. Yes, the chief engineer shares the responsibility in his department.

Q. But he is responsible to you, is he not? A. That is right.

Q. You testified, captain, that on one occasion you discussed the union with the third mate Carr while aboard the Bunson, is that right? A. That is right.

Q. That is your testimony? A. That is right.

Q. Do you recall when that conversation took place? A. No, I don't.

Q. It was sometime in the spring of 1944, was it not? A. I don't recall whether it was in the spring or later in the year.

Q. Do you know where that conversation took place? A. No, I don't recall.

Q. Was it in your cabin? A. Could have been.

Q. Was anybody else present at the time? A. No.

Q. Just you and Carr? A. That is right.

Q. Will you tell us what, if anything, you said to Carr, and what, if anything, he said to you? A. He asked me what I thought of the fact that a licensed officer couldn't bump an unlicensed man, as the rule is set forth by the CIO and I told him it looked like there was no other way out, if that thing went through, the third mate and third assistant would be bumped out of a job because they couldn't bump anybody else. That he would just have to wait and see how it turned out, there was nothing anybody could do about it.

Q. You knew this sort of information on your part would be upsetting to Carr? A. No, he asked me.

Q. But the information you gave him in no way added to his sense of security?

Mr. Hinslea: Objection.

Trial Examiner Leff: Sustained.

Q. (By Mr. Belkin): Is it not true that while aboard your ship Mr. Carr and Mr. Scharmin had several conversations, knowledge of which had come to you and every other member of the crew? A. I don't know a thing about that.

Q. You are generally familiar with what goes on aboard your ship? A. Not gossip.

Q. Then you know there was gossip? A. Is there any place there isn't.

Q. How did the gossip come to you? A. It didn't come to me.

Q. You said you knew there was gossip. A. I did not.

Q. Do you want us to believe that if there was gossip that you didn't hear about it? A. I didn't care about it.

Q. That is not answering my question. Do you want the examiner to believe there was gossip aboard that ship and you didn't hear about it?

Mr. Hinslea: About what?

Q. (By Mr. Belkin): About the conversations which occurred between Carr and Scharmin? A. Anybody can talk to anybody else without it coming to my attention. I certainly can't check on all the conversations everybody has. Might be about their wife, Churchill, I don't know what they are talking about. That is beyond my province.

Q. I will put that question to you again and I want an answer. Do you want the examiner to believe that you at no time knew of any gossip concerning conversations of Mr. Carr and Mr. Scharmin aboard your vessel? A. That is right.

Q. Mr. Carr testified here the other day that he had talked to Mr. Scharmin on matters touching upon the union on many occasions aboard your vessel. A. That is entirely possible, they were room mates.

Q. You don't want to change your testimony in view of his testimony that you might have heard gossip? A. None whatever.

Trial Examiner Leff: What did Carr know about the rotary shipping system when he came on your ship?

A. Only what he had read in the Pilot as far as I know.

Q. How would you get copies of the Pilot, captain? A. They are sent aboard the ship.

Q. Do any come to you personally? A. They are not sent to any of the licensed men.

Q. How did you get your copies? A. Bundles of them come aboard the ship and are put in the mail box and handed around.

Q. That is generally the way union literature came aboard your ship, in bundles, did it not? A. No, it comes addressed to a watchman, wheelsman, fireman, or whatever it may be, to fill out the entire unlicensed personnel.

Q. It comes in bundles? A. Bundles or loose in a sack, some way like that.

Trial Examiner Leff: When it comes in bundles, is it addressed to one particular individual aboard the ship?

The Witness: No, it comes addressed to the two to six wheelsman.

Trial Examiner Leff: Do you mean the entire bundle?

The Witness: No, each individual publication.

Trial Examiner Leff: You mean in separate envelopes?

The Witness: That is right.

Trial Examiner Leff: Does it come through the United States mail?

The Witness: So far as I know.

Trial Examiner Leff: Is union literature generally addressed to the officers as well?

The Witness: I have received two letters since the union activity started addressed to an officer.

Trial Examiner Leff: What are they?

The Witness: Telling us prior to the election about the benefits of the union and how it would help the officers and at the same time warning them that there should be no discrimination or coercion.

Trial Examiner Leff: That is one letter. What was the other?

The Witness: The same sort of a letter.

Trial Examiner Leff: That is a letter from the N.M.U.?

The Witness: Yes, sir.

Trial Examiner Leff: Proceed.

Q. (By Mr. Belkin): Captain, where did you get your information about the rotary shipping list? A. From the Pilot.

Q. Did you at any time ask any member of the N. M. U. what they believed as far as the rotary shipping list was concerned? A. No, I did not.

Q. You just made up your mind after reading the articles from the Pilot? A. That is right.

Q. That is the information that you passed along to third mate Carr? A. He read the articles, the same articles.

Q. Now, you stated in your direct examination by Mr. Hinslea that in your judgment you thought that this was pro-union propaganda, not anti-union?

Trial Examiner Leff: What question?

Q. (By Mr. Belkin) Your discussion of the negro question.

Mr. Hinslea: No.

Trial Examiner Leff: No, he did not.

Q. (By Mr. Belkin) What was your statement that this was pro-union propaganda? A. I stated that the fact that the third mate and third assistant being unable to bump anybody down the line will leave a job open for an unlicensed man.

Q. That, in your opinion, was pro-union? A. That is right.

Q. In other words, you were taking up the cudgels on behalf of the CIO in your conversation with Mr. Carr, were you not? A. No, I was not.

Q. Why did you call it pro-union propaganda? A. It proves that there is a job open for the unlicensed man, we can't bump anybody.

Q. In making such a statement to the third mate you were working on behalf of the N.M.U., is that what you want us to believe? A. I was absolutely neutral.

Q. Even though you called this pro-union propaganda? A. That is right.

Q. In your conversation—strike that. In your address to your crew during fit-out of 1945 you said to them that in view of the coming election you were going to discuss the union. Why did you think there was a forthcoming election? A. The Pilot has been pointing towards that all along and we were informed during the spring meeting in Cleveland that a request for an election had been made and the company was willing for the election to take place and we were instructed to take no sides in this.

Q. Where was this meeting held, captain? A. Which meeting do you refer to?

Q. The one you just told us about. A. Our company meeting?

Q. Yes. A. Held in Cleveland.

Q. You attended it? A. That is right.

Q. Who else? A. All masters, chief engineers and officers of the company.

Q. Where was it held? A. At the Cleveland Hotel.

Q. Do you recall what time of the year? You said in the spring, could you fix it by month? A. March.

Q. Was a similar meeting held in 1944, captain? A. That is right.

Q. During this meeting at Cleveland in March 1945, who addressed the meeting? A. All the officers of the

company from the president down, nine or ten of them perhaps.

Q. How many of them discussed the union and the forthcoming election? A. There was nobody discussed the union, but one person, I don't recall who said that there would probably be an election and stated that the company's policy was to remain absolutely neutral and advised us, all of us, to follow that attitude.

Q. Did the company officials who spoke to you tell you there was an unfair labor case before the National Labor Relations Board? A. No, they did not.

Q. They told you there was a pending election? A. That is correct.

Mr. Hinslea: No, he didn't testify to that.

Mr. Belkin: He just testified to it.

Mr. Hinslea: He testified that there might be an election.

Trial Examiner Leff: The record will speak for itself.

Q. (By Mr. Belkin) Directing your attention to the meeting held in March, 1944, was that held in Cleveland, too?

Trial Examiner Leff: What are you talking about now, 1945 or 1944?

Mr. Belkin: 1944.

The Witness: That was at the Hollenden Hotel.

Q. (By Mr. Belkin) Who attended that meeting? A. All the masters and chief engineers and company officers.

Q. You were there yourself? A. That is correct.

Q. Do you recall who spoke at that meeting? A. The company officials.

Q. Who were present? A. The masters, chief engineers, and all the officers of the company.

Trial Examiner Leff: You don't mean the officers of the vessels?

The Witness: No, the officials of the company.

Trial Examiner Leff: Were the first mates present?

The Witness: No, they never attended.

Q. (By Mr. Belkin) We have this clear then, do we not, that this meeting at the Hollenden Hotel in Cleveland in March 1944 was attended by the chief engineers, captains, of the Pittsburgh Steamship vessels? A. That is right.

Q. What, if anything, was said about the union? A. I don't recall anything being said about the union at that meeting.

Q. Didn't you just testify— A. That was in 1945.

Q. But in March, 1944, nothing was said about the union? A. I don't recall.

Q. Just take a moment and refresh your recollection. A. I still don't recall.

Q. Isn't it—

Trial Examiner Leff: Is it possible you may be confused as to the year of the meeting? When was the meeting in which the union was discussed held? Was that held this year?

The Witness: Do you mean the company meeting?

Trial Examiner Leff: Yes, the company meeting.

The Witness: As I recall it.

Trial Examiner Leff: The beginning of this sailing season?

The Witness: As I recall it, it was the beginning of this sailing season that we discussed the possibility of another election.

Q. (By Mr. Belkin) You were aboard the Bunson, were you not, captain, when the election was held in 1944? A. That is right.

Q. When was the election held aboard the Bunson, on what day, to the best of your recollection? A. Some place between the sixth and tenth of June.

Q. When did you first hear there was going to be an election aboard your ship that year? A. Shortly after the date was set.

Q. And how were you informed? A. I don't recall. I got that from reading the Pilot or through hearsay.

Q. Did you receive any communication from the government telling you about that election? A. No, I don't think so.

Q. Did you get any communication from the company telling you there was going to be an election? A. Yes, I did.

Q. When did you receive such a communication? A. I received two placards that had to be posted and I think we received them two weeks, three weeks, prior to the elec-

tion. Anyway, far enough ahead of it to comply with the law and having them posted.

Q. In other words, sometime in the middle of May you received placards from the company? A. I think they were from the company.

Q. Prior to that time you received nothing at all by way of notice concerning the election from the company? A. Either at that same time or shortly before that I received a letter of instructions.

Q. From whom? A. From Mr. Ferbert.

Q. Do you recall what was said in that letter? A. It was complete instructions covering the procedure to be followed, that the election should be held in my quarters, that I should be out of my quarters and that everybody should be permitted freedom from their duties to attend the election and in no way be interfered with, and any aid that we could give those holding the election should be rendered.

Trial Examiner Leff: Will the respondent produce that letter before the end of the hearing?

Mr. Hinslea: We have already agreed that anything we have we will produce.

Trial Examiner Leff: I want to specially mention this one.

Q. (By Mr. Belkin) Have you a copy in your files? A. No, I have not.

Q. This letter came sometime in May? A. Sometime.

Q. Prior to that did you get any communication from the company regarding the election? A. I don't think so.

Q. While you were aboard the vessel, did you at any time receive the pamphlet "N.M.U. Fights Jim Crow"?

Mr. Hinslea: Which vessel?

Mr. Belkin: The Bunson.

The Witness: Yes, I received some of those.

Q. (By Mr. Belkin) Did you read that? A. Yes, I did.

Q. How did that pamphlet come aboard the ship, to the best of your recollection? A. As I recall, it came in a bundle, the same as the rest of the union literature comes.

Q. Who distributed the pamphlet, captain? A. Whatever mate was on watch at the time it was received.

Q. So that, as you recall it, "N.M.U. Fights Jim Crow" came aboard your ship, the Bunson, in 1944, in a bundle and one of the mates distributed that pamphlet? A. That is right.

Q. Gave each member of the crew a copy? A. That is right.

Trial Examiner Leff: Was one addressed to you?

The Witness: I don't recall that.

Mr. Belkin: The witness has testified it was addressed to no one.

Mr. Hinslea: No, he did not.

Trial Examiner Leff: He didn't clarify that. He said it was received the same way that other union literature was received and he had previously indicated that the other literature was received through the United States mail. Is that what you mean, this bundle came as part of the United States mail?

The Witness: That is a point there. The mail that comes aboard the supply boat all comes in a bundle or container, a bag, or sack. My bundle of mail is brought to me, and the engineer's mail is given to him, and the steward's department mail is given to him. The mail for our forward end is put in a mail box in the hallway. Now, the exact shape and form and everything in that bundle of mail, I don't know about that.

Q. (By Mr. Belkin) Just directing your attention, not to the large container or bundle in which the mail comes, but specifically to this pamphlet, did the pamphlets come each in a separate cover or envelope or in one bundle tied together? A. It came in separate envelopes.

Q. In separate envelopes, and the mate distributed them?

Trial Examiner Leff: Do you know whether the envelopes had stamps on them?

The Witness: I think they did.

Mr. Ray: Did you get the answer? He said, "They were distributed as I have explained it."

Trial Examiner Leff: I don't want you interrupting here without asking me.

Mr. Ray: I apologize to the trial examiner but the trial examiner was speaking at the same time the captain

made that answer and I felt the reporter didn't get it and my suspicions were confirmed.

Trial Examiner Leff: Did you hear the answer, Mr. Belkin? I didn't hear it, possibly because I was talking to the captain.

Mr. Belkin: I can't say whether I did or not.

Trial Examiner Leff: If Mr. Ray says the captain did make that statement, we will take his word for it.

Mr. Ray: Ask the captain.

Mr. Belkin: You may on re-direct. I would like to proceed with the cross examination.

Q. (By Mr. Belkin) Captain, did you receive a pamphlet in which there was a reprint of Congressman Bradley's speech in 1944? A. Yes.

Q. How did you get that? A. Through the mail.

Q. In the same manner as the other material came, in separate envelopes? A. In separate envelopes.

Q. Stamped? A. That is right.

Q. And it was distributed by the mate? A. That is right.

Q. To each member of the crew? A. That is right.—That is an incorrect statement, distributed by the mate to each member of the crew, because that goes back to the argument we had here a minute ago. The mate gives me my mail, gives the engineer his, the steward's to one of the galley crew, and the rest goes back in the box. There is no personal distribution of mail from man to man.

Trial Examiner Leff: What did you mean before, when you said the mate distributed these pamphlets to the crew?

The Witness: That is the same way, that was the point of argument here when there was an interruption.

Trial Examiner Leff: Is that what you call distribution, putting it in a box?

The Witness: He gets the mail in a large bundle or container. He takes his own, gives me mine, all the engineers' mail is given to the chief engineer, the steward's being a separate department, that is taken back and handed to one of the galley crew. The remainder of the mail is all placed in the mail box, the crew picks it up at their leisure.

Q. (By Mr. Belkin) Captain, did you know there was some testimony by a Robert Vogt that when he came aboard

the Bunson in 1944 he met you at the gate? A. I met him at the gate.

Q. There is some testimony that you two met at the gate? A. Yes.

Q. How did you discover there was such testimony? A. I talked to Mr. Hinslea.

Q. And he told you what the testimony was? Did he or didn't he? A. Yes, he did.

Q. Did he show you a copy of the record? A. No, he did not.

Q. According to Mr. Vogt, captain, you two met at the gate. As a matter of fact, you took a cab, is that right, going to or coming from the gate? A. Who took the cab?

Q. Did you take a cab? A. No.

Q. Did you see him get out of a cab? A. He took a cab at Painesville to Fairport.

Q. Did you see him pay for the fare? A. I paid the fare.

Q. Mr. Vogt's testimony about that is correct, is it not, captain? A. That I paid the fare, yes.

Q. And Mr. Vogt's testimony that he had a conversation with you at the g[illegible]e is correct? A. I had no conversation with him other than I asked him if he was a watchman.

Q. You did that? A. I asked him if he was a watchman.

Q. His testimony regarding that is correct? A. I don't know what his testimony was.

Q. That he had some conversation with you. A. I stated that I asked him if he was a watchman.

Q. I want that clear. Did you ask him any questions at all about who he was beyond the question concerning his being a watchman? A. No, I did not.

Q. Had you any previous notice or knowledge that Vogt was going to be watchman? A. None whatever.

Q. Who hired Vogt? A. The Lake Carriers, I presume.

Q. And he was sent down without any prior notice to you? A. That is right.

Q. Had you shipped Vogt before? A. No, I had not.

Q. You didn't know anything about him? A. Nothing at all.

Q. And all you asked him was, "Are you a watchman?" A. That is all.

Q. Mr. Vogt testified—of course Mr. Hinslea has already told you this, I won't repeat it—

Mr. Hinslea: Now, wait.

Trial Examiner Leff: Wait a while. I don't think that remark is necessary. Just ask the questions, you don't have to characterize them.

Mr. Belkin: All right.

Q. (By Mr. Belkin) Mr. Vogt testified that you said to him, "Do you belong to the union?" Do you now deny that is the truth? A. I didn't say that to him.

Q. Mr. Vogt testified that you said to him, "Were you on any of these boats during the election?" A. I had no other conversation with him, other than asking him if he were a watchman.

Q. So that isn't true, according to your knowledge? A. No, I had no conversation with him, other than asking him if he were a watchman.

Q. Mr. Vogt testified that you said, "I don't think much of the N.M.U. or CIO." You don't recall that statement? A. I didn't say it.

Q. He also testified that you said they are a bunch of communists and Jews. You don't recall that? A. I did not say it.

Q. Did Mr. Vogt tell you whether he belonged to a union at that time? A. He did not.

Q. Did Mr. Vogt tell you at any time he belonged to a union? A. Yes, he did.

Q. When was that? A. At the time we had the conversation.

Q. In the wheel house? A. In the wheel house.

Q. Now, captain, it is your testimony, I believe, that you discussed the negro question with Vogt and the third mate in the wheel house, is that right? A. That is right.

Q. And you got your information, I take it, about the union's stand on the negro question from their pamphlet "N.M.U. Fights Jim Crow," is that correct? A. I presume it is.

Q. Did you discuss the pamphlet "N.M.U. Fights Jim Crow" with anybody else in the crew? A. I didn't discuss it with anyone but Vogt.

Q. You just discussed the negro question with Vogt, is that right? A. As I previously stated in my testimony.

Q. Now, captain, is it your belief that the pamphlet "N.M.U. Fights Jim Crow" was aboard your ship as part of the union's campaign to win the election?

Mr. Hinslea: Objection.

Trial Examiner Leff: Overruled.

Mr. Hinslea: That is an opinion.

Mr. Belkin: That is an opinion—

Trial Examiner Leff: I have overruled the objection.

Q. (By Mr. Belkin): Will you answer my question? A. Will you please restate it?

Q. I will be glad to. Is it your opinion that the pamphlet "N.M.U. Fights Jim Crow" was aboard your ship as part of the union campaign to win the election? A. I think it was. That is a personal opinion of mine.

Q. Yes. You knew, did you not, captain, that the pamphlet "N.M.U. Fights Jim Crow" was being used to hurt the union's campaign? A. Not if the union put it out I couldn't get that angle.

Q. If the union did not put it out, could you get that angle?

Mr. Hinslea: I object to that.

Trial Examiner Leff: Objection overruled.

Mr. Hinslea: There is no testimony in the record that that was the purpose.

Trial Examiner Leff: Objection overruled.

Mr. Belkin: Will you read the question, Miss Reporter?

(Question read by reporter.)

Q. (By Mr. Belkin): Will you answer that, captain?

Mr. Hinslea: Mr. Examiner, how can he?

Trial Examiner Leff: I have ruled on the objection.

Mr. Hinslea: I would like to be heard again. How can the witness know, make any opinion, if he doesn't know who sent the pamphlet. It is purely hypothetical. You are asking a man a question, the man hasn't any basis to form an opinion.

Trial Examiner Leff: I realized when you made your objection that that would be your argument and there is no point in arguing the objection at length in a form which

might possibly indicate to the witness what answer is wanted.

Mr. Hinslea: I object to that statement.

Trial Examiner Leff: Very well.

Q. (By Mr. Belkin): Will you answer the question? A. I still think it was pro-union.

Q. You testified that if it hadn't been put out by the union you might have a different thought. A. I didn't testify to that.

Q. Suppose the company had put this pamphlet out, would you think that it was being used for the purpose of helping the union's campaign? A. I don't know what I would think.

Q. By the way, captain, did you ever talk to Mr. Scharmin about the union? About the rotary shipping list? A. I had no conversation with him whatsoever.

Q. When Mr. Carr told you he was interested in the rotary shipping question you pointed out that the third mate and the third assistant engineer were definitely interested in the question. A. He asked me. That is in the testimony.

Q. Yes. You pointed that out to him, did you not, that both the third mate and the third assistant engineer had jobs which were in jeopardy if this thing came through? A. No, I did not point it out, he asked me.

Q. If that weren't true? A. If that possibility were there or what would become of them.

Q. Didn't you answer him that that possibility was very definitely there, isn't that true? A. Yes, it is true.

Q. Now, in view of that, did you at any time talk to Mr. Scharmin about the rotary shipping list? A. I never had any conversation with Scharmin.

Q. Did you instruct the chief engineer to speak to him about it? A. No.

Q. Captain, you testified you had a conversation with the mates on the question of the union, did you not? A. What mates, what year?

Q. Well, now, if I haven't put your testimony correctly, suppose you tell me if you ever had any conversation with the mates about the union in 1944 or 1945? A. I gave the mates instructions prior to the election, the instructions that were given to me, to take no part, no side, to be impartial.

Q. That was in 1944 prior to the election? A. That is right.

Q. At that time did you discuss the rotary shipping list with the mates? A. No.

Trial Examiner Leff: Incidentally, when were those instructions given to you and by whom?

The Witness: Given by Mr. Ferbert, covering procedure to be followed during the election.

Trial Examiner Leff: Shortly before the election?

The Witness: That is right.

Trial Examiner Leff: How long before?

The Witness: I think we covered that once before that I got two placards that were to be posted two or three weeks, whatever the period that was to conform with the law.

Trial Examiner Leff: Was that the first notice you received from the company officials to be neutral?

The Witness: No, no, we never received any other instructions than to be neutral.

Trial Examiner Leff: That does not answer my question. I asked whether that was the first time you received notice from the company officials to be neutral?

The Witness: Yes, it was. That is the first communication we ever received of any kind regarding the union or the election.

Mr. Belkin: Are you through, Mr. Leff?

Trial Examiner Leff: Yes.

Q. (By Mr. Belkin): Now, at the meeting with the mates in which you said to them, "I want you fellows to be neutral" in substance, was Mr. Carr present?

Trial Examiner Leff: This is the Cornell?

The Witness: No, this is going back to the Bunson.

Q. (By Mr. Belkin): Was he a member of your crew then? A. Yes, he was.

Q. Was he present when you told them to be neutral? A. Yes.

Q. That is all you said? A. That is right.

Q. You are positive? A. That is right.

Q. It may surprise you, captain, that the other day Mr. Carr testified that in this conversation with you in the presence of not only himself but the other mates, you dis-

cussed the rotary shipping list. Which is true, Mr. Carr's statement or yours? A. The only time we discussed that union proposition at all was in the pilot house, as I stated in testimony here before.

Q. So that if Mr. Carr testified that you discussed the rotary shipping list at the meeting with himself and the other mates, Mr. Carr's testimony is false? A. I am not testifying his is false. I am testifying to the best of my memory.

Q. I will ask you again, Captain Lawless, whether you at any time in the course of your conversation with Mr. Carr and the other two mates discussed anything except their obligation to be neutral? A. I may have. I don't recall exactly.

Q. Now you are saying you may have; before you absolutely denied saying it. Which is true? A. I may have.

Q. If you may have, will you tell us what you said about the rotary shipping list? A. I don't recall.

Q. Captain, you studied this question pretty thoroughly. You read the Pilot, and so on, you discussed it with Mr. Carr. You recall that conversation, don't you? A. Discussed which question?

Q. Rotary shipping. A. I say there is a possibility.

Q. With Mr. Carr alone? A. No, I did not speak of rotary shipping.

Q. Did you not testify a little while ago that Mr. Carr came to you and asked you about the rotary shipping list and you discussed it with him? A. That is not rotary shipping, that is seniority, an entirely different problem.

Q. So your testimony now is that the question of seniority has nothing to do with the rotary shipping list? A. Not there. It was about licensed men being unable to take unlicensed men's jobs. That was the topic Carr and I discussed.

Q. You say that is a question solely of seniority? A. No, I wouldn't say it was solely seniority. I said it was a different problem.

Q. Is that embodied in rotary shipping? A. Not as far as I can see.

Q. You have read up on it? A. There is no connection between the two.

Q. No connection between the two at all? A. Not that I can see.

Q. So that when Carr came to you, according to your testimony now, you were just discussing the question of seniority. Now, Captain, is it not true that only if the rotary shipping list were adopted by the company, would the third mate and third assistant engineer be bumped if there is a cutback in personnel. A. I can see no connection between the two questions, rotary shipping and the fact that a licensed man cannot hold an unlicensed man's job.

Q. In other words, it is your statement now that it is the policy of the company to bump the third mate rather than give him an unlicensed job? A. No, that is not the policy of the company, the policy of the company is the exact opposite.

Q. That is what I understood. In other words, as things stand now, the company not being under a contract with the N.M.U., if jobs were scarce and you had to cut personnel, the third mate would have to go down to the next highest job which would be available amongst the unlicensed members of the crew? A. That is true.

Q. Now, as a matter of fact, it is true, isn't it, captain— A. That is right.

Q. That under the rotary shipping list, as you understand it, the third mate would be out of a job, if the N.M.U. had a contract with the company? A. Let's clarify rotary shipping.

Q. Go ahead and tell us what you understand. A. My understanding of rotary shipping is that at the hiring hall the man whose name is on the board on top of the list here where he is registered is the man who gets the job, and when they are on the ship, why, rotary shipping, as I got it from the Pilot means that if that man is on there for a long period of time and some other man hasn't been out, that he shall be given a chance to go to work.

Q. Exactly, and you made that clear to Mr. Carr. A. We did not discuss rotary shipping that I recall. We could have.

Q. Now it is your recollection that you did not discuss rotary shipping with Mr. Carr? A. We may have, I don't recall. We may have.

Q. I will ask you one more question on that topic. If Mr. Carr were not down on one of those rotary shipping lists, as you understand that system, and there was a cut-

back of personnel, he wouldn't have a job with the company, would he? A. That would be if the company were signed up with the union and that is purely a conjecture.

Q. You were saying, weren't you, captain, that if the N.M.U. held a contract with the company, what I outlined would occur, as you understand it, is that right? A. That is what I told him.

Q. That is what you told him? A. Yes, he asked me if that would occur and I said I thought it would.

Q. Doesn't that involve the rotary shipping list? A. I do not see any connection with rotary shipping at all.

Q. You testified that in the conversation with Vogt at the wheelhouse that you told him that the union was making a mistake, in your opinion, by showing pictures of negroes working and living with the white people? A. That is right.

Q. Isn't it true Vogt said the union was not showing those pictures around? A. I said pictures in the Pilot. I think that is in the testimony.

Q. In other words, you were just discussing the Pilot, not "N.M.U. Fights Jim Crow"? A. That is right.

Q. So you were interested in straightening out Vogt on the union policy? A. No, he asked me and I gave him an answer. It was entirely my own opinion.

Q. Now, referring to your meeting with the men on board the Cornell in the spring of 1945, was the entire crew present? A. All except the galley department.

Q. You say there were a large percentage of men who had never been aboard a ship before? A. That is right.

Q. Why wasn't the galley department present? A. Nothing that would be taken up at the meeting would be of interest to the galley department.

Q. Weren't safety regulations of interest to every member of the crew? A. Yes, but the galley department is confined within four walls and their safety hazards are similar to the housewife in the kitchen.

Q. But safety involved the galley crew as well as the others? A. I presume.

Q. But you still did not ask the galley crew to attend this meeting? A. That is right. That is the usual practice on all the ships.

Q. Not to ask the galley crew to attend safety instructions? A. That wasn't attending safety instructions.

Q. Now, is there some question of discrimination?

Trial Examiner Leff: What was the galley department personnel, was it colored or white in 1945?

The Witness: They were white till mid-season.

Trial Examiner Leff: I don't know what your purpose is here. Do you care to explain?

Mr. Belkin: Of course I do. The captain in the direct examination has testified he called this meeting. He said certain things, had certain ideas in mind. I just asked the captain what his purpose for calling the meeting was and he said safety.

Trial Examiner Leff: Then you get in a long discussion as to why the galley crew was not invited.

Mr. Belkin: It goes to the credibility of the witness.

Trial Examiner Leff: On a very immaterial issue. I do not think this is sufficiently important to involve spending any time on it. Please proceed.

Q. (By Mr. Belkin): You said to the crew, every person present there except the galley crew, that in view of the pending N.M.U. election you wanted to make your policy clear, is that right? A. That is right.

Q. And you say there were a certain number of men who had not been aboard your ship before,—not aboard any ship and therefore not aboard the Pittsburgh vessels? A. That is right.

Q. And you were not present when the men or personnel of the Pittsburgh Steamship line voted in the last election? A. That is true.

Q. Vogt was present at that meeting? A. He was.

Q. I take it, and this is your sworn testimony, captain, that you said to him, "I want you fellows to understand that no one has to join the union and no one will be discriminated against if they do." Is that right? A. That is right.

Q. Now, as far as you knew, what unions were attempting to organize members of the crews of the Pittsburgh Steamship vessels? A. As far as I know, the SIU and the CIO.

Q. Was the SIU actively engaged in a campaign to sign up your men at that time? A. As far as I know, I guess they were as much as the CIO.

Q. Was that your recollection that you named no union in your remarks, according to your testimony? A. There was no reference to any union, I said.

Q. So therefore you did not mention the CIO or any union? A. No.

Trial Examiner Leff: Exactly what did you say at that time? That they didn't have to belong to any union to sail on your ship?

The Witness: I said they didn't have to belong to any union to hold their job or if they were a member that that wouldn't make a bit of difference, and at that time I said, "Here is a good union man right here," and I reached over like this (demonstrates), I said, "I carried him last year and I hired him again this year." I said, "Is that right," Vogt said, "That is right."

Q. (By Mr. Belkin): Captain, did you at any time in your conversation with the men say, "I don't have any prejudice or hold anything against a union man because I was a union man once myself."? A. That is right.

Q. You didn't testify before as to that, but now your testimony is that you did say that? A. I said that.

Q. You recall it now but not before? A. I recall that.

Q. And since you recall that now and not before, I want to call your attention to the fact that that part of the testimony of Robert Vogt about your speech is true, is it not? A. That is true.

Q. Robert Vogt testified that after you concluded the question of food, you hesitated for a moment and said, "There is one other thing I would like to speak about." Is that true? A. I don't recall hesitating. I probably said, "There is one other thing I want to talk about," as an extemporaneous speech.

Q. You do recall saying that? A. I perhaps said that. I maybe said that half a dozen times during that talk.

Q. I see. So Vogt's testimony is true. Vogt also testified that you said, "I want you fellows to understand that you don't have to belong to any union and especially to the CIO or N.M.U. to hold your job on this boat." A. I never made any mention of any union.

Q. Now the engineer, didn't he speak on safety, too? A. Yes, he touched on safety in his department.

Q. So Vogt's testimony that he did speak on safety is correct. A. I don't know what Vogt's testimony was.

Q. He said "about the only thing he said was a few things on safety" and that is true? A. Yes.

Q. And Vogt also testified that the chief engineer agreed with what you said about the CIO and the N.M.U. A. No, he never said that.

Q. He made no such remark at all? A. That is right.

Q. He didn't agree with what you thought—strike that. I will reframe it. Did the chief engineer say anything at all about agreeing with any of your statements? A. No, he had his own statements to make.

Q. So he didn't say he agreed with anything you had said? A. No.

Q. Did you at any time reprimand Mr. Carr for discussing the union question with his men? A. No, I did not. It did not come to my attention.

Q. If it had come to your attention, would you have reprimanded him for so doing? A. Yes, I would because he should have taken an impartial attitude.

Q. So that if you had had any information that Carr had discussed the union in the presence of the crew and Mr. Scharmin you would have reprimanded him? A. I would have—not reprimanded him unless he showed partiality. If he showed partiality, I would have reprimanded him.

Mr. Belkin: That is all.

Trial Examiner Leff: Do you contemplate a lengthy examination?

Mr. Rosenfeld: No, I think not.

Cross Examination.

Q. (By Mr. Rosenfeld): Captain Lawless, you knew about the N.M.U. before the 1944 season? A. Sure.

Q. Did you ever sail in deep water? A. About a month to six weeks.

Q. Recently? A. No, about in 1921 or '22.

Q. How did you learn about the National Maritime Union before 1944? A. Through the Pilot.

Q. How long have you been reading the Pilot? A. Since its early appearance.

Q. 1935? A. I have forgotten when it came out.

Q. It could be as far back as that? A. Perhaps.

Q. Did you read about the ISU in the Pilot? A. I don't recall that.

Q. And you read it fairly conscientiously, fairly diligently? A. I haven't studied it. I looked over all the issues that came my way with interest.

Q. From reading the Pilot you have a fairly good idea about the composition of the union? A. I wouldn't say that. I never read the by-laws or anything like that.

Q. You have a fairly good idea about the by-laws of the union? A. Perhaps what I think was a good idea wouldn't be your idea of a good idea.

Q. Let's put it this way. You have an idea about the policies of the union, good or bad as the case may be? A. I presume so.

Q. And do you know who the officers of the union are? A. Only that Joe Currin is the president and Lawrenson is the vice-president.

Q. Do you know the names of any of the other officers? A. No, I don't.

Q. Did you ever see the name Ferdinand Smith in the Pilot? A. I think Ferdinand Smith is secretary.

Q. Have you ever seen the name of Frederick Nelson Myers in the Pilot? A. Not that I recall.

Q. Did you ever see the name of Howard McKinzie in the Pilot? A. Not that I recall.

Q. Did you ever see the name of N. Hedley Stone in the Pilot? A. Yes.

Q. What do you know about Currin aside from the fact that he is president of the union?

Mr. Ray: If the trial examiner please, I object. I don't see the relevancy of the question.

Trial Examiner Leff: I am ready to excuse the witness.

Mr. Rosenfeld: If you will excuse this witness and the other witnesses, I would be happy to state my reasons.

Trial Examiner Leff: Will all those attending the hearing as witnesses go out of hearing distance, including the witness on the stand. I will call you when we are ready for it.

(Witnesses leave the room.)

Mr. Rosenfeld: During the course of the board's case, the witnesses have testified that the union was accused through its officials and that its officials were characterized as communists, nigger lovers, Jews, racketeers. The respondent has put direct questions to its witnesses and has asked them to affirm or deny these statements by the board's witnesses. I think that it is important as going to the credibility of the respondent's witnesses to determine what view they have of the union's officials.

Trial Examiner Leff: Is it your theory that if they have an aversion to the union they would be more apt to make such statements?

Mr. Rosenfeld: Exactly.

Trial Examiner Leff: And that is one of a number of facts that should be considered in weighing the credibility of the witnesses?

Mr. Rosenfeld: That is right.

Trial Examiner Leff: For that purpose I will allow it. Just a minute, I want to hear from Mr. Hinslea, if he has anything to say.

Mr. Hinslea: I have nothing to say.

Mr. Rosenfeld: I promise you I won't press it too far but I want to have some opportunity to have you hear it.

(Witnesses return.)

Mr. Rosenfeld: Will you read the question, Miss Reporter?

(Question read by reporter.)

Q. (By Mr. Rosenfeld): Will you answer the question. What do you know about Currin aside from the fact that he is the president of the union? A. Nothing.

Q. Have you ever read anything about Currin outside the Pilot? A. Occasional pieces in the newspaper, same as you or anybody else might see.

Q. Did you gain any information about Currin from those pieces in the newspaper? A. No, just news items.

Q. What do you know about Ferdinand Smith? A. Nothing.

Q. Except that he is secretary of the union? A. That is all.

Q. That is all you know about him? A. That is right.

Q. Did you learn anything about Smith aside from what you read in the Pilot? A. No, I don't think so. Perhaps I see something in the paper about him, I don't know. I don't recall, rather.

Q. What do you know about Stone? A. All I know about him, I think he used to be in Cleveland.

Q. That is all? A. That is all.

Q. Did you ever have any dealings with him while he was in Cleveland? A. No, never saw the man.

Q. Now, Captain, I want to refer to something that was gone into at some length but I think perhaps we can clarify it. As you understand it, bumping for seniority and rotary shipping has nothing to do with one another? A. I don't think so.

Q. Under the rotary shipping system, the unlicensed jobs are filled from the list in the union hall? A. I think so.

Q. The longest man on the list is the first to get the job? A. I think so.

Q. In order to get an unlicensed job, his name would have to be on the rotary shipping list? A. I think so.

Q. A licensed officer is not on the rotary shipping list? A. I do not think so.

Q. A licensed officer could not get a job under rotary shipping? A. Not as an unlicensed man?

Q. So that under rotary shipping a licensed man could not be sent down to the unlicensed personnel? A. No.

Q. So that bumping and rotary shipping do have considerable to do with each other? A. I presume they might tie in an indirect manner.

Trial Examiner: Re-direct?

RE-DIRECT EXAMINATION.

Q. (By Mr. Hinslea): Captain, this pamphlet of "N. M. U. Fights Jim Crow" you said came in an envelope? A. Yes, it did.

Q. How was it addressed? A. To two to six wheelsman or six to ten watchman, however it might be.

Q. Do you remember whether or not there was a return address on the envelope? A. If my memory serves me right I think there was a post office box number on the left hand top.

Trial Examiner Leff: How do you know that? Did you see these envelopes?

The Witness: Yes, they were all over the vessel.

Trial Examiner Leff: The envelopes were all over the vessel?

The Witness: The whole thing.

Trial Examiner Leff: You mean the what?

The Witness: The pamphlets and the envelopes.

Trial Examiner Leff: Do you mean when they came on board?

The Witness: No, after the fellows had seen what they were, they were laying around, some of them were picked up, some of them weren't.

Trial Examiner Leff: Did you pick up any envelopes?

The Witness: I found one in the pilot house and read it.

Trial Examiner Leff: The envelope?

The Witness: No, the Jim Crow pamphlet in the envelope.

Trial Examiner Leff: I am talking about the envelope. You gave certain testimony as to the form and content of the envelope. My inquiry is this. Did you ever see the envelope?

The Witness: I have seen it lots of times.

Trial Examiner Leff: Where did you see it?

The Witness: Aboard the ship.

Trial Examiner Leff: When?

The Witness: When they came aboard the ship.

Trial Examiner Leff: When they came aboard the ship in bundles?

The Witness: How do you mean?

Trial Examiner Leff: What time did you see the envelope?

The Witness: That is pretty hard to answer. Sometime during the time that group of envelopes come aboard the vessel.

Trial Examiner Leff: How did you come to see them?

The Witness: They were around every place. The fellows had them.

Trial Examiner Leff: Did the fellows show you the envelopes?

The Witness: I don't recall. There was an envelope laying here with the contents, up in the pilot house.

Trial Examiner Leff: Is it customary for the men to throw envelopes on the floor?

The Witness: That type of mail is laying around, sometimes laying in the hallway until the fellows clean it up.

Trial Examiner Leff: Is it not the practice when mail comes aboard the ship for the mate to give the captain his mail, the chief engineer his mail, and put the mail in the box for distribution to the crew?

The Witness: That is right.

Trial Examiner Leff: Then you don't look at the mail before it is distributed?

The Witness: I do not.

Trial Examiner Leff: Your knowledge as to where it was addressed is from envelopes you saw thrown away?

The Witness: That is right.

Trial Examiner Leff: Is it customary for the crew to throw envelopes on the floor?

The Witness: That type of stuff. Many of them don't pick it up, they see it in the mail box and throw it down.

Trial Examiner Leff: Proceed.

Q. (By Mr. Hinslea): This Bradley envelope, did you receive one addressed to you? A. I did.

Q. How was that addressed? A. To my name and title.

Trial Examiner Leff: You are referring to the Bradley speech.

Mr. Hinslea: Bradley.

Trial Examiner Leff: Did we not have testimony on that before?

Mr. Hinslea: Yes, we did.

Q. (By Mr. Hinslea): Did you notice on that envelope whether there was a return address? A. Yes, his Washington address?

Q. Whose? A. Bradley's.

Q. His name and his Washington address? A. That is right.

Q. Now, this mail box, just for the purpose of the record, will you describe it, how the men get the mail out of the mail box? A. The mail box is attached to a bulkhead in the crew's hallway, and it is generally a square box, tapered towards the bottom and perhaps nine inches deep, open at the top.

Q. Open so anybody can reach in and take out the mail? A. Yes.

Mr. Hinslea: That is all.

Trial Examiner Leff: Any further questions?

RE-CROSS EXAMINATION.

Q. (By Mr. Belkin): Captain, we have considerable testimony as to the appearance of the Bradley speech aboard the Pittsburgh Steamship vessels. This is the first time anyone has said that the letters in which this speech came carried Mr. Bradley's Washington address. Are you sure? A. I am quite certain.

Q. And you saw it yourself? A. I absolutely did see it. I am quite certain.

Q. Take your time. I want you to refresh your recollection and give it to me as you know it. A. I am quite certain. I know his name appeared on there and address. I am quite certain it was Washington.

Q. Where was the address? A. On the letter?

Q. Yes. A. I don't know about the letter.

Q. I mean the envelope. On the envelope it was the top left hand corner? A. I am quite sure.

Q. Very well. That is all.

Trial Examiner Leff: Do you recall the size of the envelope?

The Witness: Approximately like that.

Trial Examiner Leff: You are describing, estimating dimensions. About eight inches by five.

The Witness: It was brown, I believe, the color of it.

Trial Examiner Leff: A brown envelope. Was it about the size of Board's Exhibit 4?

The Witness: That whole sheet there?

Trial Examiner Leff: No, this.

The Witness: No, it was about the size of that.

Trial Examiner Leff: Take a look at this, was it about the size of that?

The Witness: That must have been it.

Trial Examiner Leff: Was it, just approximately?

The Witness: Yes.

Trial Examiner Leff: Any further questions?

Mr. Belkin: Not by the board.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: We will take a short recess.

(A short recess was taken.)

Trial Examiner Leff: The hearing is in order.

FRANK DOBSON, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?

The Witness: Frank Dobson.

Trial Examiner Leff: And your address?

The Witness: Wadsworth, Ohio.

DIRECT EXAMINATION.

Q. (By Mr. Ray): Mr. Dobson, what is your occupation? A. First mate.

Q. On what vessel? A. The Ralph Watson.

Q. The vessel is owned by whom? A. The Pittsburgh Steamship Company.

Q. In 1944 what vessel were you on and what was your rating? A. First mate on the Irving S. Olds.

Q. Will you give us a general description, not too detailed, of your duties, Mr. Dobson, as mate on the Olds? A. As mate on the steamer Olds I had charge of the upkeep work, had considerable clerical work to do, had charge of loading, and I piloted the ship eight hours a day.

Q. Is it fair to say that in addition to standing the regular navigation watch, you were executive officer under the captain on this ship? A. Yes.

Q. Now, during the navigation season of 1944, did you or did you not know a seaman by the name of Shartle? A. Yes.

Q. What was his rating on the vessel? A. Watchman.

Q. When did he come aboard the vessel? A. At fit-out in Lorain, Ohio.

Q. At fit-out? A. Yes.

Q. Now, referring to the fit-out season, during the navigation season of 1944, did you have any knowledge of

Shartle's duties during that period of time? A. Did I have any knowledge of his duties?

Q. Of his duties? A. Oh, yes, I have.

Q. What were his duties during that period of time and before the navigation started? A. The first thing he did was scrub the floor of the forward end of the boat, and after that we painted the hull.

Q. Did Mr. Shartle participate in painting the hull? A. Yes, he did.

Q. While he was painting, did you observe him at that work? A. Occasionally, yes.

Q. And what did you observe with respect to his work during that period? A. I found he wasn't any painter at all.

Q. What do you mean by that? A. He didn't seem to have any knowledge of how to paint.

Q. How did his work compare with the other men who were painting the vessel's hull? A. He was usually quite a ways behind the rest of them. His stage partner would paint about seventy-five per cent of the work while he painted a quarter.

Q. Who was in direct charge of the painting crew which included the gang of which Mr. Shartle was a part? A. I designated the second mate to do that work.

Q. State whether or not if any time during the season the second mate made any report to you concerning Mr. Shartle's work. A. Yes, he did.

Q. What was that report? A. He told me that he was not much of a painter and that he was slow and that he was trying to slow the rest of them down also.

Q. What, if any, action did you take at that time with respect to Mr. Shartle? A. I didn't do anything about it, tried to hurry him up a little bit.

Q. Now, after the navigation started, Mr. Dobson, whose watch did Mr. Shartle go on? A. He was on the third mate's watch.

Q. During the navigation season, did you have any chance to observe Mr. Shartle's work? A. Yes, I often go around to see how different jobs are working.

Q. Now, with particular reference to the handling of the electric winches on the steamer Irving S. Olds, what have you to say with respect to Mr. Shartle's work in that

connection? A. We all endeavored to teach Mr. Shartle how to operate the winches but after two or three weeks—I don't know just how long he was there—but he never did learn to operate them.

Q. Now, again referring to the winches on board the Olds and Mr. Shartle's operation of the winches, state whether or not any mate—I mean either of the other mates—made any report to you concerning Mr. Shartle's operation of the winches? A. Yes, the second mate came to me and told me that Shartle had almost parted a wire in one of the aft machines.

Trial Examiner Leff: Done what?

The Witness: Parted a wire.

Q. (By Mr. Ray): Did the parting of a wire—strike that. Did the mate say when that incident occurred? A. He may have at the time but I just don't recall. It was during shifting up and down the dock.

Q. Is it or is it not customary to have deckhands on the dock when the vessel is shifting? A. Yes, we have a deckhand at each end to handle the cables.

Q. Would the parting of a line be dangerous under those circumstances? A. It could be very dangerous, just depending on where it would part. If a deckhand happened to be standing near it, it would snap and hit him in the face and knock him down.

Q. What was your own observation as to Shartle's work during the navigation season as distinguished from the fit-out season?

Mr. Belkin: I object. There is no foundation for a question like that.

Trial Examiner Leff: How is he going to draw a comparison on a thing like that without giving his bare opinion.

Mr. Ray: If the trial examiner please, maybe the form of the question is not as it should be and I will reframe it.

Trial Examiner Leff: That is what I had in mind.

Q. (By Mr. Ray): Did you observe Mr. Shartle's work during the navigation season? A. Yes, I did.

Q. How did his work compare with the other unlicensed deckhands or crew at that time? A. He didn't seem to know what it was all about, didn't seem to have any experience at all. We tried to teach the man but he is

just one of those that couldn't learn. Guess he will never be a sailor.

Q. Now going back to the fit-out, Mr. Dobson, did the work gangs during that time have specified hours to work? A. Yes, they did.

Q. State whether or not, during the fit-out, Shartle ever reported late for duty of your own knowledge. A. He did twice to my knowledge.

Q. Do you recall the circumstances under which it occurred? A. Yes, he went to Cleveland without consulting me at all. He would come back a half hour to forty-five minutes late in the morning and say nothing to anyone.

Q. Now, did you at any time give Mr. Shartle the job of splicing? A. Yes, I had him—rather I laid out the cringle splicing job for him.

Q. Just what is the cringle splicing job for the record? A. Cringle is put on the end of the tow line that attaches to the bow pendant, tow line pendant.

Q. Is or is not splicing of the tow line part of the watchman's duties? A. It definitely is the duties of the watchman.

Q. Now, referring to the time when you assigned this duty to Mr. Shartle, will you kindly tell us what transpired following your assignment of the job to the man? A. Shartle was given the job at approximately 6:15 in the evening and about 7:30 I went around to see how he was coming along with it. He was standing there doing nothing while John Vogel was showing him how to do splicing. I told him to leave it alone, he didn't have to, if Shartle couldn't do it we would get somebody else who could.

Q. Did Shartle finish the splicing job, or who did? A. Not to my knowledge. I don't know who did finish it but it wasn't Shartle.

Q. Now, did Mr. Shartle leave the employ of the Pittsburgh Steamship Company and cease to be a member of the crew of the Irving S. Olds on his own volition?

Mr. Belkin: I object to that kind of a question.

Trial Examiner Leff: What is objectionable about it? Objection overruled.

Mr. Belkin: If the examiner please, I know you made the decision, but I want to be heard.

Trial Examiner Leff: I don't see there is any necessity. Can't he ask him whether he was discharged? Is there any dispute? Why waste time?

The Witness: Shartle was discharged.

Q. (By Mr. Ray): Who discharged him? A. I did.

Q. Why? A. Because he was absolutely no good on anything I put him to do.

Q. Now after Shartle was discharged or after you told him that he was discharged, did Shartle—strike that. Just a little while prior to the time Shartle left the vessel, did he or did he not come to you and have a conversation with respect to the reason for his discharge? A. Prior to his leaving the vessel?

Q. Shortly before. A. After he was discharged and I paid him off he asked me why he was discharged.

Q. What did you say? A. I told him it was because he was incompetent, that there wasn't anything I could put him to and trust him.

Q. At any time did you say to Mr. Shartle, "There are certain things a person has to do nowadays whether he likes it or not. I am supposed to get a master's job on one of these ships and if I do get a ship I would like to have you back with me." A. I definitely did not say that because I had no idea of ever getting a ship to sail.

Q. Now, who was put in Shartle's place? A. If I remember, it was a fellow by the name of Jack Cole.

Q. How long had Cole been on the vessel prior to the time he was promoted to watchman? A. Since fit-out, the same length of time as Shartle.

Q. Did you observe Cole's work? A. Yes, I did.

Mr. Belkin: If the examiner please, I don't know how the question of promoting Jack Cole is relevant to the issue in this case.

Mr. Ray: May I be heard?

Trial Examiner Leff: No, the objection is overruled.

Q. (By Mr. Ray): Do you have the question, Mr. Dobson? I will repeat the question. Did you have a chance to observe Mr. Cole's work after he was promoted to take Shartle's place? A. Oh, yes.

Q. How did his work compare with Shartle's work?

Mr. Belkin: Mr. Examiner, this is after.

Trial Examiner Leff: I understand. The point is that you have taken the position all along that the fact that the company chose an ordinary seaman to take the position of an A.B. is in itself an evidence of discrimination.

Mr. Belkin: I grant that.

Trial Examiner Leff: I assume Mr. Ray is attempting to show that Cole was qualified for that position.

Mr. Belkin: Now up until the time they put Cole in Shartle's place I grant, perhaps, the position of the respondent is material, but now he is questioning this witness on how Cole performed his work after Shartle had left.

Trial Examiner Leff: That tends to show what his capabilities were at the time he was appointed. I will allow it.

The Witness: He was a very ambitious young fellow and seemed to want to learn everything we tried to teach him. He wanted to know all about steamboating and I thought at the time that some day he would make a good man.

Trial Examiner Leff: When you discharged Shartle, did you intend to replace him with Cole or with another A.B.?

The Witness: No, I had no intention of replacing him by Cole as we tried to get another A.B. but couldn't get one then we promoted Cole.

Q. (By Mr. Ray): Did Cole do the regular work of watchman after he was appointed for that position? A. He did most all the duties, yes.

Q. Which duties didn't he do? A. He could run the machines and deck winches where Shartle couldn't. He was very good at bossing the deckhands. He seemed to get quite a bit more work out of them.

Q. What ability or lack of ability did Shartle have with respect to handling the deckhands? A. He had no organizing ability at all that I could see.

Q. Now, during the time you were mate on the Olds, were you acquainted with a seaman by the name of John Vogel? A. Yes, he was my watchman.

Q. He was on your watch? A. Yes, he was.

Q. Mr. Vogel has testified, Mr. Dobson, that in the pilot house, in the latter part of May, with you and the wheelsman present, that Captain John Murray said he

would sure hate to pass out orders to colored wheelsmen and colored watchmen aboard the vessel. I will ask you whether or not Captain Murray ever made a statement of that type in your presence? A. Not to my knowledge, no.

Q. Now, with respect to Vogel, do you recall—do you or do you not recall an incident when a man named Riley returned to the vessel and engaged in a conversation with Cole? I mean with Vogel? A. Yes, I remember that incident.

Q. Now will you please describe the circumstances surrounding that incident? A. We were unloading at Conneaut and I believe we were almost unloaded and Riley came back to the boat, he had already resigned, had been paid off, and he came back to the boat and started an argument with John Vogel and I thought they were coming to blows so I went up to them and parted them and then this Riley explained to me what it was all about.

Q. Now, Mr. Dobson, at that time did you—strike that. In connection with that incident, Mr. Vogel has testified that you said to him, "So you are the union organizer, that is where all this trouble is coming from. You can pick up your clothes and get off." Did you or did you not make that statement to Mr. Vogel? A. I did not.

Q. When, with respect to that incident, did Mr. Vogel leave the vessel? A. He left the next trip.

Q. Did he leave voluntarily or was he discharged? A. He left voluntarily.

Q. Now, Mr. Dobson, at any time while you were on board the Olds, did you have any union discussion with the unlicensed personnel? A. Never.

Mr. Ray: You may cross examine.

Trial Examiner Leff: I want to ask a question or two first. Who made the decision to discharge Shartle?

The Witness: I did.

Trial Examiner Leff: Did you confer with anyone about it?

The Witness: No.

Trial Examiner Leff: Was it your own decision?

The Witness: Yes.

Trial Examiner Leff: Did you confer with the captain?

The Witness: No.

Trial Examiner Leff: Did Captain John Murray have anything to do with the decision to discharge Shartle?

The Witness: No.

Trial Examiner Leff: It was purely your decision?

The Witness: Yes.

Trial Examiner Leff: And was based on information which you had?

The Witness: It was based on his incompetency.

Trial Examiner Leff: The discharge was effected upon instructions from Captain Murray.

The Witness: No.

Trial Examiner Leff: Made entirely on your own volition?

The Witness: Yes.

CROSS EXAMINATION.

Q. (By Mr. Belkin) Who paid Shartle off? A. I did.

Q. Did he talk to the captain about his discharge? A. I believe he went to the pilot house to find out why he was discharged.

Q. Did you tell him to go to the captain? A. No, I did not.

Q. He went on his own volition? A. Yes.

Q. You testified you attempted to get another A.B. on Shartle's discharge. Was it you who made the attempt or somebody else? A. It might have been me. I don't remember if he was on watch or not. If he wasn't on watch I instructed the other mate to call the Lake Carrier's hall.

Q. In other words, this attempt to get someone else occurred while the ship was in harbor? A. Yes.

Q. What harbor? A. Conneaut.

Q. Did you make any attempt beforehand to get another A.B.? A. No.

Q. Your attempt was just on the day you were in the harbor? A. It so happened that way.

Q. That is the day you discharged Shartle? A. Yes.

Q. In other words you made your decision to discharge Shartle that day? A. No, I hadn't made the decision that day.

Q. You made it before? A. Yes.

Q. But you waited till that day to discharge him? A. Yes.

Q. How long before had you made up your mind to let him go? A. Since the splicing incident.

Q. When did that splicing incident occur? A. I don't know.

Q. In relation to the time you discharged Shartle? A. Maybe a day before we got to Conneaut. Maybe a day and a half or two days.

Q. Did you talk to Mr. Zyp about letting Shartle go or about replacing him with someone else? A. No.

Q. Did you tell the captain you were attempting to get another A.B.? A. I don't recall whether I did or not.

Q. How many other A.B.'s did you yourself discharge during 1944? A. I don't believe there were any more.

Q. Did Captain Murray discharge any other A.B.'s during 1944? A. No.

Q. How many A.B.'s did you discharge in 1945—I mean you yourself. A. This year? I haven't discharged anybody.

Q. Has Captain Murray discharged any this year? A. He is retired.

Q. Who is the captain of your ship now? A. Captain William McLachlan.

Q. Has Captain McLachlan discharged any A.B.'s this year? A. No, he hasn't.

Q. In 1943 did you discharge any A.B.'s? A. In 1943?

Q. Yes. A. I may have.

Q. Do you recall anyone? A. No, I don't recall any, no.

Q. Was Captain Murray the captain in 1943 too? A. No, he was with Captain Clarence Wallace.

Q. Did Captain Wallace discharge any A.B.'s that year?

Mr. Ray: If the trial examiner please, I object to this line of examination, if the purpose is to find out whether any A.B.'s were discharged on the Pittsburgh fleets during 1943, '44 and '45, I can't see that it has any bearing.

Mr. Belkin: Of course you know that isn't the purpose. If the cross examination does not show it is pertinent, I will join in the motion to strike.

Trial Examiner Leff: I think it has some relation to the issues, to determine whether or not other A.B.'s were discharged. I overrule the objection.

Q. (By Mr. Belkin) As a matter of fact, captain,—

Mr. Ray: This man is a mate.

Trial Examiner Leff: Since Mr. Belkin was reprimanded for calling a captain Mr., everyone is captain now.

Q. (By Mr. Belkin) As I was saying, Mr. Mate, it is true, as a matter of fact, that outside of Shartle, you as first mate have never discharged an A.B. without consulting the captain? A. Yes, I have at numerous times.

Q. Is that a common custom that the mate discharge an A.B. without consulting the captain? A. Yes.

Q. Is not the captain responsible for the safety and welfare of the entire personnel of the ship? A. That is right.

Q. The number of A.B.'s aboard the ship is very important to the welfare and safety of the crew? A. Hasn't been for the last couple years.

Q. Do you mean to tell us now it is no longer important? A. It is important but often times we couldn't get the proper number of A.B.'s.

Q. How many A.B.'s did you have aboard your ship when you sailed in 1944, Mr. Mate? A. I don't remember.

Q. How many were you supposed to have? A. Eight.

Q. How many did you have left after Shartle was gone? A. Six.

Q. So you have been sailing shorthanded all the time? A. No, not all the time.

Q. Pardon? A. No, not all the time.

Q. Was there any time when you had eight during the season of 1944 prior to June 6th? A. I don't remember that.

Q. That is a very important matter, the complement of A.B.'s, is it not? A. Yes.

Q. And you don't remember how many you had in the spring of 1944? A. I am not certain whether we had the full amount or not.

Q. To the best of your recollection? A. I think we had at least seven.

Q. But you did not have eight? A. I don't know.

Q. After Shartle was gone you had six? A. That is right.

Q. Vogel was a very good worker? A. No, he wasn't a good worker. He was awfully slow.

Q. Did you know Vogel was a member of the union? A. No, I did not.

Q. Did you know he was organizing? A. No.

Q. You didn't know Vogel talked to any of the men urging them to join the union? A. Not until the day in Conneaut.

Q. Not until the day in Conneaut when you heard Riley and Vogel conversing? A. Riley had a—

Q. Please answer the question first, then you can explain it. A. Will you repeat the question?

Q. I will be glad to. You didn't know, then, until the day that you overheard Riley and Vogel conversing that Vogel was organizing for the National Maritime Union aboard your ship? A. No, I did not.

Q. What day was it, to the best of your recollection, that Riley and Vogel had that conversation? A. I haven't any idea.

Q. Was it in May? A. I don't know.

Q. Do you recall the election aboard your ship? A. I do.

Q. When did that occur? A. Between the 6th of June and I would say the 8th or 9th. A. How long before the election did you hear Riley and Vogel conversing? A. That was—

Q. Roughly, to the best of your recollection? A. I wouldn't make a guess because I don't know.

Q. Would you say it was a week or two? A. I don't know.

Q. If Mr. Vogel testified it was sometime in June, would you agree with his testimony? A. That it was sometime in June?

Q. Yes. A. I can't disagree because I don't know when it was.

Q. You said that Riley explained to you what this argument was all about. What, if anything, did Riley say to you? A. He was beefing over not having something to show for the money that he had given John Vogel. It seems as though he had come up to the hall at Conneaut

for his check and they told him that for an additional twelve or fifteen dollars he could have his check and then he came back to John Vogel and wanted $12.50 back.

Q. And they began to quarrel and you stopped them? A. That is right.

Q. What, if anything, did you say to Vogel after you had settled this argument, or at least quieted them down? A. I was awfully surprised to find out that Vogel was the person who was causing so much trouble.

Q. What did you say to him? A. I don't remember.

Q. Take your time and think about it and then give us the best of your recollection. A. I don't know, still don't know.

Q. Had there been much trouble aboard your ship? A. No.

Q. In the course of the union campaign? A. No.

Mr. Ray: You have to hold your voice up, I can't hear even where I am.

The Witness: No, there wasn't.

Q. (By Mr. Belkin) As a matter of fact, Vogel got off then the next time your ship touched the shore, isn't that right? A. Yes, he got off the following trip.

Q. In the meantime, you told Vogel you changed your mind and that you were willing to let him stay, is that true? A. That I was willing to let him stay? I didn't know I had made up my mind to anything.

Q. You at no time said to Vogel you wanted him to leave the ship? A. No, I did not.

Q. How long, as far as time is concerned—strike that. In relation to the time that Mr. Vogel left the ship at Conneaut, how long before he did so did he have this argument with Mr. Riley? A. Approximately six days—six or six and a half days.

Q. The Vogel-Riley argument occurred shortly before you sailed, did it not? A. I believe it did.

Q. Within a half hour or so? A. I think so.

Q. Within that half hour, if Vogel had wanted to get off the ship then, would he have been able to get his stuff together and go? A. Not without holding up the ship.

Q. So Vogel could not have gotten off at that time? A. He could have, if he wanted to.

Q. But he would have held up the ship by collecting his materials? A. Yes.

Q. Captain, you said in response to a question by Mr. Ray, the company's counsel, that you couldn't have said what Mr. Shartle said you did because—and I am quoting you—"I had no idea of ever getting a ship to sail." A. I didn't.

Q. And do you at this time still have no idea of getting a ship to sail? A. No.

Q. Is it impossible for a mate to hope to? A. I certainly hope to some day, don't know when it will be.

Q. At least at the time of your conversation with Shartle you had no idea that the possibility would ever occur? A. No.

Trial Examiner Leff: Have you a master's license?

The Witness: Yes, I do.

Q. (By Mr. Belkin): If the Pittsburgh Steamship Company would say to you, "we have a boat available, we would like to have you for captain," you have all the necessary licenses and requirements to take the job, haven't you? A. I have, yes.

Q. How did you find out Shartle was a member of the union? A. I didn't know he was a member of the union.

Q. At no time? A. No.

Trial Examiner Leff: I didn't hear this, who were you referring to?

Mr. Belkin: Shartle.

Q. (By Mr. Belkin): Did you know the union was organizing your unlicensed personnel before the election in 1944? A. I had heard something about it but didn't pay any attention to it.

Q. From whom had you heard it? A. Perhaps in the Pilot or different rumours.

Q. Did any of the supervisory officers of the company tell you there was going to be an election? A. Yes, we got that information from the Cleveland office.

Q. How did you get that information? A. I just don't remember how it was.

Q. You said from the Cleveland office. Will you explain that? A. It was a sort of bulletin informing us when the election would take place.

Q. So, as a matter of fact, your previous statement that you had heard it some place and didn't know where,

wasn't true? A. I thought you meant outside the company.

Q. I did mean that. Your testimony now is that you heard it from the company.

Trial Examiner Leff: Did you get a letter addressed to you as first mate concerning the election?

The Witness: I don't remember whether I did or not.

Trial Examiner Leff: What was it you referred to a minute ago?

The Witness: Bulletins come from the Cleveland office that we all had access to.

Trial Examiner Leff: How were these bulletins made known to the mates?

The Witness: They were in a book and everyone has access to them, the mate and the captain. The captain gets them and puts them in a book.

Trial Examiner Leff: Are all communications received from the company placed in a certain book or folder?

The Witness: I can't say they are.

Trial Examiner Leff: What is the practice?

The Witness: No, everything of importance is put in this book, but anything that doesn't concern us directly, the mates, perhaps doesn't, I don't know.

Trial Examiner Leff: What is that book called?

The Witness: Bulletin book.

Trial Examiner Leff: For how long a period is that book retained?

The Witness: It is kept on board for several seasons. I found them dated back three, four or five years.

Trial Examiner Leff: Will you proceed.

Mr. Belkin: If the examiner please, I would like to have the bulletin book of the Olds subpoenaed.

Trial Examiner Leff: You are requesting a subpoena?

Mr. Belkin: Yes.

Trial Examiner Leff: You don't have to request it during the hearing.

Mr. Belkin: I think instead, if I may—

Trial Examiner Leff: During recess if you will request a subpoena. Perhaps the company will voluntarily produce it.

Mr. Belkin: May I direct it to counsel?

Mr. Ray: If it is available.

Mr. Belkin: There has been testimony that this book is kept for several seasons.

Mr. Ray: I said if it is available it will be produced.

Mr. Belkin: On that, I will rely on his statement and not request a subpoena.

Q. (By Mr. Belkin): Do you recall what that bulletin said? A. No, I don't.

Q. But you read it. A. I am pretty sure I read it.

Q. Was the pamphlet "N.M.U. Fights Jim Crow" aboard your vessel? A. I believe it was.

Q. Did you see a copy? A. I recall the Jim Crow name but I didn't read anything about it.

Q. You just saw the pamphlet? A. I think I did, yes.

Q. You didn't read it? A. No.

Q. Did you ever discuss it with anyone? A. No, I did not.

Q. Did you ever ask anyone else if they had read it? A. No, I did not.

Q. You saw this pamphlet and you didn't open it? A. I didn't say I saw it, I had heard about it, I didn't say I saw it.

Q. So while you were aboard the ship you at no time saw a copy of the pamphlet? A. I don't remember that I did. I don't think so.

Q. When did you hear about the pamphlet? A. Just various rumours.

Q. What were these rumours? A. I don't know, just recall the Jim Crow name, that is all.

Q. Was there a rumour aboard your vessel that there was such a pamphlet aboard? A. I don't know whether it was aboard the vessel or where it was.

Q. Did you ever discuss it with anyone on shore? A. No, I did not.

Q. Did the captain convey this rumour to you? A. I don't believe so. I don't know.

Q. Did the second or third mate convey it to you? A. I don't know.

Q. Or was it members of your unlicensed personnel that told you about it? A. I don't know who it was.

Q. Did you ever see a copy of this speech that we have talked about by Congressman Bradley aboard your vessel? A. Yes, I got it.

Q. Recently? A. Yes.

Q. Mailed to you? A. Yes, sir.

Q. With your name on the letter? A. Yes.

Q. Not to First Mate but to Mr. Dobson? A. Might have been first mate, I don't recall.

Q. Your name was on it? A. I don't recall.

Q. You said your name was on it. A. I know I did, but I don't recall.

Q. It might have been either? A. Might have been either.

Q. Directing your attention to your observation of Mr. Shartle's painting the vessel, how many times did you watch him paint? A. I was all over the ship several times a day and each time I would pass the gang I would stop for a moment and see how the work was coming along.

Trial Examiner Leff: How did you know Mr. Shartle was painting only one quarter of—what do you call it?

The Witness: You mean—

Trial Examiner Leff: The fleet, and the other fellow painting three quarters?

The Witness: The second mate told me.

Trial Examiner Leff: So your testimony in the direct examination was based on what the second mate told you?

The Witness: I had also noticed Shartle wasn't a constant painter.

Trial Examiner Leff: That was not my question. You testified on direct examination that Shartle was painting one quarter of the fleet and his partner was painting three quarters although they were each supposed to paint one-half, is that right?

The Witness: Yes.

Trial Examiner Leff: My question is this, did you actually observe that Shartle was painting only one quarter and his partner three quarters or was your testimony based on what the second mate had told you?

The Witness: Not altogether. Now that I do recall it, I was working with that gang one afternoon to try to get the boat scoured up.

Trial Examiner Leff: Yes. How did you arrive at that proportion, one quarter and three quarters?

The Witness: Shartle stayed at one spot, never moved out of that spot. The plank is about sixteen feet long, and

his partner would complete his half and move to Shartle's. Shartle never moved at all.

Trial Examiner Leff: How many courses—by course I mean—They are on a scaffold and work across?

Mr. Belkin: They call it fleet.

Trial Examiner Leff: The fleet is the whole thing.

Mr. Belkin: No.

Trial Examiner Leff: How many fleets did you observe?

The Witness: Perhaps three or four.

Q. (By Mr. Belkin): How long did it take to paint the vessel? A. We didn't have very good weather last spring and I think it took around five or six days to complete the job.

Q. Even with bad weather, it took only five or six days? A. It might have taken longer. I think it was the better part of a week.

Q. When you yourself were observing the painting, did you reprimand Mr. Shartle at all for being slow? A. No, I did not.

Q. And while you were supervising the job of painting, did Mr. Vogel, who, I understand, was Shartle's painting partner, ever come to you and complain that he had to work too much? A. No, he did not.

Q. You testified on direct examination, Mr. Mate, that Mr. Shartle in your opinion was absolutely no good for any job? A. That is right.

Q. Why didn't you discharge him before? A. I wanted to give the fellow a chance to make good. I gave him every opportunity possible to make good and he did not.

Q. For over a month? A. I don't know how long it was.

Trial Examiner Leff: You understood that question to be referring to Shartle?

The Witness: Yes.

Q. (By Mr. Belkin) Have you ever had any difficulty with other inexperienced A.B.'s, Mr. Mate, in the course of the last four years? A. Just what do you mean by difficulty?

Q. Have you ever had any other A.B.'s in the last four years, who, in your opinion, were inexperienced in such jobs as splicing? A. Splicing cringle, yes, I have.

Q. How often have you found it? A. Not very often.

Q. But you have found it several times? A. Yes.

Q. Were those men discharged? A. No, simply because they were professional in most other duties.

Q. So that if a fellow couldn't splice cringle that wasn't necessarily a reason for discharging him, was it? A. No.

Q. As a matter of fact, is it not true that quite often splicing cringle is done by the mate? A. I haven't seen it.

Q. Your third or second mates never splice cringle? A. It is usually an A.B.'s job.

Q. But the mates often do it? A. I have never seen it.

Q. Did you at any time inform Captain Murray of the fact that Shartle wasn't doing his painting job? A. No, I did not say anything to the captain.

Q. Did you at any time inform the captain, Captain Murray, that Shartle had almost let a wire part while the boat was shifting? A. I may have mentioned that when I discharged him.

Q. To the captain? A. He probably asked me why I discharged him.

Q. I understand from previous testimony that you did not consult the captain. A. I didn't. He probably asked me why I discharged him.

Q. In other words, after you had discharged Shartle and he left the ship? A. I may have did it voluntarily, I don't know. I may have told him why I let him go.

Q. But you did tell the captain? A. I did.

Q. This occurred after Shartle left the ship? A. Yes.

Q. Before Shartle left the ship, did you tell the captain that, as you allege, Mr. Shartle nearly let a wire split or break? A. I don't believe I did.

Q. But you thought that was rather a serious matter? A. Yes, I did.

Q. And you did not inform the captain at the time? A. No.

Q. Is that customary? A. What is that?

Q. Let me put this to you then. Is it customary or is it not customary for you to report serious cases of negligence to the captain? A. Well, yes.

Q. You do report those cases? A. I do.

Q. If you think they are serious? A. I do.

Q. But in this case you didn't report it to the captain until after Shartle had left? A. I don't believe I did.

Trial Examiner Leff: Along the same line, is it usual to talk to the captain when you fire an A.B. and the result will be to reduce the normal and required complement of A.B.'s aboard the vessel?

The Witness: I just don't understand that question.

Trial Examiner Leff: You know you are supposed to keep a certain number of A.B.'s aboard the vessel?

The Witness: That is right.

Trial Examiner Leff: There are some laws on that?

The Witness: That is right.

Trial Examiner Leff: If you discharged an A.B. and you have no one available immediately to replace him and following the discharge there will be less than the required complement of A.B.'s, would you not ordinarily consult the captain before discharging the A.B.?

The Witness: Oh, yes, I would.

Q. (By Mr. Belkin) But you didn't do it in this case? A. No, I did not.

Q. You testified that in your opinion Shartle would never be a sailor. A. That is right.

Q. Would it surprise you to know that before—strike that. You said Mr. Shartle reported late twice during the fit-out season. A. Twice that I am quite sure of, but it may have been more than that.

Q. But only twice that you are sure of? A. Yes.

Q. Isn't it a fact that on the first day he went to see the company doctor and told you about that. A. Probably was the first day but that didn't have any bearing on his coming back from Cleveland late twice.

Q. But he did tell you and you did discover that he had been to the company doctor? A. I probably sent him there myself, which was just up the dock at Lorain.

Q. Then you knew about his going? A. Yes.

Q. Did he tell you why he was late the second time? A. No, he didn't. Never consulted me one way or the other.

Q. Did you ask him why he was late? A. No, I did not.

Q. Did you reprimand him for being late? A. No.

Trial Examiner Leff: Did you ever reprimand him except for the splicing job?

The Witness: I probably did, yes.

Trial Examiner Leff: Do you recall ever having done so?

The Witness: I think I checked him up several times on his painting.

Q. (By Mr. Belkin) You testified before that you hadn't discussed that matter with him ever?

Mr. Ray: I don't recall he testified that.

Trial Examiner Leff: Did you so testify before?

The Witness: I don't believe I said that.

Mr. Belkin: The record will show.

Q. (By Mr. Belkin) You say in regard to this cringle splicing job that you found John Vogel helping Shartle do the work. Do you object to members of your crew helping one another? A. John Vogel wasn't helping at all. He was doing the entire job while Shartle stood by and watched him.

Q. Vogel was explaining the job? A. He was doing the work.

Q. Was he instructing him in any way? A. Not that I heard.

Q. And you feel that Mr. Shartle was obtaining no benefit at all from watching Mr. Vogel work?

Mr. Ray: I object to that. What difference does it make whether he was obtaining any benefit?

Trial Examiner Leff: I will permit it.

The Witness: He may have gotten some benefit, I don't know, but the fact was that John was working off watch and I didn't want that.

Trial Examiner Leff: Well, if—I just want to ask one question—if John were working off watch at that time, would you be required to pay him overtime?

The Witness: If I had requested him to work.

Trial Examiner Leff: If you had not requested him?

The Witness: I didn't request him.

Trial Examiner Leff: If you had not requested him, would the company be obliged to pay him overtime?

The Witness: I suppose so, if he demanded it.

Q. (By Mr. Belkin) Do you want us to understand, Mr. Mate, that it an individual member of your crew vol-

untarily did some work he was not told to do that he would be paid overtime? A. No, I don't wish you to understand that, no, he would have to be authorized.

Q. So that Vogel working on cringle splicing would not cost the company any money? A. No, not in that case.

Q. Was anyone else present on the cringle splicing job when you came along and saw it? A. I think a deck watch was there.

Q. What was he doing? A. Watching Vogel also.

Q. Had you assigned a deck watch to the job of splicing? A. The deck watch was to help the watchman.

Q. Isn't it true, Mr. Mate, that after you told Shartle to get off this job, that the job wasn't done until the next watch, when you instructed Vogel to do it? Isn't that true? A. I don't know whether I instructed Vogel to do it or not. I don't recall who finished it.

Q. Mr. Vogel testified that on the next watch you instructed him to do the job and he did it. A. Maybe I did, I just don't recall.

Q. You denied certain statements made by witnesses in this proceeding. Was their testimony read to you? A. No.

Q. Was that testimony given to you in some way by anyone? A. No, sir.

Q. You didn't discuss the testimony that Mr. Vogel gave in this hearing with anyone else prior to today? A. I think Mr. Ray here told me.

Q. You discussed it with Mr. Ray? A. I don't know, he told me what it is I think.

Q. Mr. Ray told you what the testimony of Mr. Vogel had been at the hearing? A. Yes.

Q. And in each case that Mr. Vogel—strike that. In each case Mr. Ray—strike that, too. Following the argument between Riley and Vogel, do you recall Vogel saying that we have only an hour until the ship sails and I can't pack my clothes and be off in that time? A. He may have said that.

Q. You don't deny that he might have? A. No, I don't deny that.

Q. Isn't it true that you said, "All right, you can make another trip. When you come back have your clothes ready to go"? A. I don't remember.

Q. What did you say to him when he said to you, "I can't pack my clothes and be off in an hour"? A. I didn't ask him to pack his clothes.

Q. After he said that did you ignore that statement? A. I may have told him not to get off that trip, I don't remember. I may have told him that if he wanted to get off to get off the following trip, I may have said that.

Q. You don't know why he wanted to get off? Let's put it this way, do you know why he wanted to get off at that time? A. No.

Q. He didn't tell you? A. No.

Q. You didn't tell him to? A. No.

Trial Examiner Leff: Were you anxious to have him get off?

The Witness: Not especially.

Trial Examiner Leff: Is it not true that in 1944 you were trying to keep people on board the ship?

The Witness: As much as we could, yes.

Trial Examiner Leff: And wouldn't you in 1944 speak to seamen who you had learned were intending to quit and try to induce them to remain?

The Witness: I wouldn't try to induce anybody to stay against their wishes.

Trial Examiner Leff: Would you find out why they were leaving?

The Witness: Generally I would ask them why they were leaving.

Trial Examiner Leff: What would be the purpose in asking them that question?

The Witness: We are supposed to ask each and every member when he quits why he is leaving.

Trial Examiner Leff: Now, in a case where the person is qualified to perform his job, aren't you supposed to encourage him to remain and not to quit? I mean during these years of manpower shortage.

The Witness: No, as a rule I don't encourage anybody to stay, if they want to quit that is their business.

Q. (By Mr. Belkin) Did you run the ship short-handed at any time in 1944? A. I think we did.

Q. The fact is that that situation has been prevalent on the Great Lakes—

Mr. Ray: I object.

Trial Examiner Leff: On what ground?

Mr. Ray: On the ground that the witness has already stated that they had seven A.B.'s when eight is required.

Mr. Belkin: Who is talking about A.B.'s now?

Trial Examiner Leff: Objection overruled.

Q. (By Mr. Belkin) There was a shortage of men also in 1944? A. Yes.

Q. As a matter of fact there was a shortage of men on all the Pittsburgh Steamship vessels? A. Yes.

Q. And there was a shortage on your ship, because you ran shorthanded? A. Yes.

Mr. Belkin: That is all.

Mr. Rosenfeld: No questions.

Mr. Ray: No further questions.

Trial Examiner Leff: Just a minute. I believe you testified that you discharged Shartle because you found him no good in anything that you put him to do, is that correct?

The Witness: That is right.

Trial Examiner Leff: Is that the reason you discharged him?

The Witness: He was also a menace to the safety of the men.

Trial Examiner Leff: Now, will you please outline to us so I can have it in compact form the respects in which you found him no good and the respects in which he was a menace to the safety of the men?

The Witness: He wasn't a sailor, he couldn't run the deck machines at the loading and unloading dock. Generally a mate had to do it for him. And as I say, he couldn't organize the deck hands, to get any work from them, he wasn't a good executive, you know.

Trial Examiner Leff: Now, with respect to painting after the fit-out period, the beginning of the sailing season, is there any painting required to be done aboard the ship?

The Witness: Yes, sir, lots of it.

Trial Examiner Leff: On what occasions?

The Witness: Rooms have to be painted, decks, the hatches, the windlass room—the whole ship has to be painted if it needs it.

Trial Examiner Leff: And it always does need it during the sailing season, is that right?

The Witness: Quite often.

Mr. Belkin: May I interrupt?

Trial Examiner Leff: No, you may not. Was there any further painting done aboard this ship in 1944?

The Witness: Yes, all the rooms were painted.

Trial Examiner Leff: When?

The Witness: The galley department was painted during fit-out.

Trial Examiner Leff: I mean after fit-out.

The Witness: After fit-out, most all the rooms are painted.

Trial Examiner Leff: What part of the season?

The Witness: The first couple months.

Trial Examiner Leff: Do the A.B.'s do the painting?

The Witness: A.B.'s and deckhands.

Trial Examiner Leff: In what respects was Shartle a poor executive?

The Witness: He couldn't manage the deckhands, couldn't get any work out of them, let them wander off the job, take a smoke, sit down.

Trial Examiner Leff: Give us a specific instance, based on your observation, when you observed that he couldn't control the deckhands.

The Witness: I don't know as I can do that. I never saw any time at all that he was working the deckhands, that he could handle them.

Trial Examiner Leff: Is it not the mate's function to give orders to the deckhands?

The Witness: Not always, no. The mate lays out the work and the watchman on the watch is supposed to see that it is done.

Trial Examiner Leff: I just want one example where Shartle failed to manage the deckhands. Just tell us what happened.

The Witness: I thought I tried to tell you that he couldn't get any work out of them at any time.

Trial Examiner Leff: I understand that. Just tell me how, it is not clear to me. What did you observe? Take any day you want.

The Witness: The deckhands were standing around, they weren't doing anything, while he was supposed to see that they were doing something.

Trial Examiner Leff: What were they supposed to do with their time at the occasion you had in mind?

The Witness: They were supposed to be working or painting or whatever I had laid out for them to do.

Trial Examiner Leff: What had you laid out for them to do on this occasion?

The Witness: On any occasion at all he couldn't handle the deckhands, couldn't get work out of them at any occasion.

Trial Examiner Leff: Was Vogel—strike that. Who took Vogel's place, was it Cole?

The Witness: Jack Cole.

Trial Examiner Leff: Was Cole one of the deckhands under Shartle?

The Witness: He was a deck watch under Shartle, yes.

Trial Examiner Leff: Any further questions?

Mr. Belkin: No.

Mr. Ray: Just one further question.

Q. (By Mr. Ray) For the record, will you explain how the unlicensed men are rated, from the deckhands up? A. The deckhands, then the deck watch, then the watchmen, then the wheelsmen.

Q. You have four unlicensed ratings? A. Yes.

Trial Examiner Leff: Is an A.B. above them?

The Witness: The watchmen and wheelsmen are A.B.'s.

Trial Examiner Leff: That is all I wanted to know.

Mr. Ray: No further questions.

Trial Examiner Leff: We will take a fifteen minute recess.

(A fifteen minute recess was taken.)

Trial Examiner Leff: The hearing is in order.

FRANK J. HEWER, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?

The Witness: Frank J. Hewer.

Trial Examiner Leff: What is your address?

The Witness: Pickford, Michigan.

DIRECT EXAMINATION.

Q. (By Mr. Ray) What is your occupation? A. Third mate.

Q. On what vessel? A. The Ralph H. Watson.

Q. Which vessel were you on during the navigation season of 1944? A. The Irving S. Olds.

Q. In what capacity? A. Third mate.

Q. Now, during the fit-out of the Irving S. Olds, Mr. Hewer, state whether or not you had supervision of any of the work. A. Yes, I had charge of the part of the crew —the gang cleaning up, scrubbing cabins, and so forth.

Q. Were you acquainted with a man by the name of Howard Shartle? A. I was acquainted but he wasn't on my gang.

Q. Not on your gang? A. No.

Q. On which gang? A. Chrobak's, second man.

Q. After the vessel started navigating, was Shartle assigned to your watch? A. Yes, he was watchman on the six to ten watch.

Q. Calling your attention, Mr. Hewer, to the time when the Irving S. Olds was up bound either in the Detroit River or approaching the Detroit River, do you or do you not recall an occasion when Captain Murray called Shartle in to the pilot house to steer the vessel? A. Yes, he did.

Q. Were you or were you not in the pilot house at that time? A. I was in the pilot house.

Q. Mr. Shartle has testified, referred to that incident as follows: "The first mate was up there and John Mizner, he was a wheelsman, he was up there, and the captain. He said, 'come up here and let's see how you salt water men steer on the river.' " Did Captain Murray say that or not? A. I wouldn't care to go as far as saying that was his exact words, although I know he called him up.

Q. Mr. Shartle has further testified that "Captain Murray said to me, 'Are there any niggers out on salt water?' " Did you hear Captain Murray say that? A. I don't recall.

Q. And Mr. Shartle has further testified that Captain Murray said, "You know if the union gets in here on the lakes you are going to be eating and sleeping with nig-

gers." Did you hear Captain Murray say that? A. No, I did not.

Q. Putting it another way, did Captain Murray say that in your presence? A. No, he never did, I don't recall it whatsoever.

Q. Now, did you or did you not at any time talk unionism with Shartle? A. No, I didn't figure that was my place to discuss unionism.

Trial Examiner Leff: Will you speak out, please.

Q. (By Mr. Ray) Now, while Shartle was working under you as third mate during the navigation season, did you or did you not, on any occasion, run the winches for Shartle?

Mr. Belkin: Don't answer that question for a minute. I object to this question, if the examiner please. The witness has testified that Shartle was not on his watch.

Trial Examiner Leff: He testified that after the navigation season began, he was.

Mr. Belkin: I misunderstood the question and withdraw the objection.

Q. (By Mr. Ray): You may answer the question. A. Yes, a number of times I helped shift the boat along the dock, took the controls from Shartle.

Q. What was the reason for taking the controls from Shartle? A. I didn't figure he was competent to handle them.

Q. In what way was he incompetent? A. Well, these electric controls—these controls on the electric winches have two danger points. They are marked "stop" and "plug" and if at any time the control is left on either of those spots, or contacts rather, the wire is put on the spile, something is going to come, usually the wire, and that is mighty dangerous both to the man handling the controls and to the man on the dock, the deckhand.

Q. State whether or not, any of the time that Shartle was handling the winches, the lever was put in those danger positions? A. It was in one instance when the second mate happened to be standing nearby and he was able to get to the controls in time before the wire parted.

Q. You testified that you took the controls away from Shartle. Did those occasions occur before or after the incident you have now described when the second mate took

the controls away from Shartle? A. Both before and after.

Trial Examiner Leff: The time the second mate took the controls away, were you present?

The Witness: I was aboard the ship, I was forward at that time.

Trial Examiner Leff: So you have no personal knowledge except what the mate may have told you?

The Witness: That is right.

Q. (By Mr. Ray) Now, what type of work did you observe Shartle doing as a watchman? A. Well, during the period that he was there in the spring they were painting the hallways, cleaning up, getting the ship organized for the season and he wasn't a good painter, he didn't have the —well, say the ability to demonstrate the proper method of painting to the men under him, the three deckhands and the deck watch.

Q. What if anything else did you observe with respect to other types of work? A. Well, on all the jobs he was put on he didn't have the proper leadership qualities to organize it and get the job completed well.

Q. Now, as his immediate superior officer during the navigation season, Mr. Hewer, did you or did you not form an opinion as to Shartle's competency or incompetency as a watchman? A. Yes, I did.

Q. What was that opinion? A. That he wasn't a trustworthy man to have in that position as watchman.

Trial Examiner Leff: Did you express that opinion to anybody?

Mr. Ray: You mean on the vessel?

Trial Examiner Leff: Yes.

The Witness: I may have mentioned it to the first mate because he was my immediate superior.

Trial Examiner Leff: Well, I know it was within the realm of possibility, but did you mention it? Do you recall that you mentioned it?

The Witness: No, I don't recall definitely that I did.

Q. (By Mr. Ray) Now, after Shartle was discharged, Mr. Hewer, state whether or not he came to you and asked you—and inquired from you as to whether he was competent or incompetent? A. No, he didn't.

Q. Now, who took his place, a seaman by the name of Cole? A. That is right.

Q. Was Cole therefore on your watch? A. On my watch, yes.

Q. Did you have a chance to observe his work? A. Yes, both before Shartle was discharged and after.

Q. What have you to say with respect to the way he did the work?

Trial Examiner Leff: Before or after?

Q. (By Mr. Ray) First before, and then after he became watchman? A. Cole was an industrious man; he was interested more in his work and he could get more done in his watch than Shartle could, man to man.

Trial Examiner Leff: There is one thing I would like to inquire about now. You heard the testimony of the last witness?

The Witness: Yes, I did.

Trial Examiner Leff: He was what? The first mate?

The Witness: That is right, first mate.

Trial Examiner Leff: There were three watches aboard on the ship?

The Witness: That is right.

Trial Examiner Leff: The hours are six to ten, ten to two, and two to six?

The Witness: That is right, that was the custom last year.

Trial Examiner Leff: The first mate is in charge of one of the three watches, the second mate in charge of the second, and the third mate in charge of the third?

The Witness: That is right.

Trial Examiner Leff: After the navigation season started, was Shartle ever on the watch that was under the supervision of the first mate—that is, the witness who testified before you did?

The Witness: The first mate has supervision of the layout of the work on all watches.

Trial Examiner Leff: But who supervises the performance of the work?

The Witness: He was on my watch, I was his immediate supervisor.

Trial Examiner Leff: So he came under your supervision and not under the supervision of the first mate, as far as performance of the work was concerned?

The Witness: Yes.

Q. (By Mr. Ray): In connection with the question the trial examiner has just asked you, Mr. Hewer, does or does not the first mate have the right, and is it part of his duties, to see that the work that was laid out is carried out? A. Yes, it is the mate's responsibility.

Mr. Ray: May I have the trial examiner's indulgence for a minute?

Trial Examiner Leff: Surely.

Q. (By Mr. Ray): Going back to the fit-out time, Mr. Hewer, did you or did you not observe Shartle while he was painting the hull of the vessel? A. Well, what little I observed of him was just momentary, passing by. He wasn't on the gang that I was running.

Mr. Ray: You may cross examine.

Trial Examiner Leff: There are a couple questions I want to ask before the cross examination. Did you ever reprimand Shartle for his work?

The Witness: Yes, I did.

Trial Examiner Leff: Will you tell us the occasion for the reprimand and what you said to him?

The Witness: Well, one instance, we were painting the port hall, and I went down for a moment from the pilot house to see how they were coming along. I didn't like the way things were going, it was a poor paint job, and I spoke to him about that at that time.

Trial Examiner Leff: What did you say?

The Witness: Well, I couldn't say my exact words but I advised him to do a better job and supervise the men more in their painting, show them how to do it.

Trial Examiner Leff: When was that with reference to the fit-out period?

The Witness: Shortly after fit-out.

Trial Examiner Leff: On what trip?

The Witness: I couldn't say definitely. It was within the first couple trips.

Trial Examiner Leff: How long would a trip take?

The Witness: Approximately six days.

Trial Examiner Leff: Now, is it your testimony that you don't recall whether or not you ever expressed your opinion concerning Shartle's ability to the first mate?

The Witness: No, I don't recall whether I did or not.

Trial Examiner Leff: Did the first mate question you with reference to Shartle's ability before Shartle was discharged?

The Witness: Yes, he asked me before I discharged him how he had been getting along with his work and I told him.

Trial Examiner Leff: What did you tell him?

The Witness: Just as I have told you, that there was a number of things that he was doing that weren't up to par, could be much better.

Trial Examiner Leff: What else was said in your conversation with the first mate concerning Shartle at that time?

The Witness: I don't recall. I think that covers about all of it as far as I can remember.

Trial Examiner Leff: Didn't the first mate ask your opinion as to whether or not Shartle should be discharged?

The Witness: That wouldn't be within my say-so anyhow.

Trial Examiner Leff: Don't you have authority to recommend discharges as mate in charge of a watch?

The Witness: Oh, yes, but I don't recall whether he did or not.

Trial Examiner Leff: Did you yourself have anything to do with the decision to discharge Shartle?

The Witness: No, that was entirely the first mate's decision.

CROSS EXAMINATION.

Q. (By Mr. Belkin): Just when did the mate ask you about Shartle? A. Shortly before he was discharged. Might have been, say, a week, as close as I can tell at this time.

Q. You say that was a week before he was discharged? A. Approximately, yes.

Q. Did you see the pamphlet "N.M.U. Fights Jim Crow" aboard your ship, Mr. Hewer? A. I seen that pamphlet, yes.

Q. Did you read it? A. I couldn't say honestly whether I did or not, I don't know.

Q. Did you ever talk about it? A. Not to my knowledge.

Q. Did you ever hear the crew talk about it? A. I don't remember.

Q. Did you ever hear the crew talk about the rotary shipping list? A. I heard some discussion about that, yes, as to—in respect to its working.

Q. Where did you hear these discussions—I mean, in the vessel? A. When the Pilot came aboard, quite often the fellows read it and would get to discussing it then.

Q. With whom? A. Between themselves and I used to read it myself, too.

Q. You discussed rotary shipping with the men? A. No, I did not discuss it with them, I overheard the conversation.

Q. Did you ever discuss the rotary shipping list with the second mate? A. No, I don't believe I ever did.

Q. With the first mate? A. No.

Q. The rotary shipping list, if it came in on the Pittsburgh vessels would be very important to you? A. It probably would.

Q. It might mean your job? A. It might, yes.

Q. Do you want us to believe that you never questioned any other officer about the rotary shipping list? A. No.

Q. Even though it was so vital to you? A. No.

Trial Examiner Leff: What do you mean by no, when Mr. Belkin asks that question—that you don't want us to believe that or that you never questioned any officer about the rotary shipping list?

The Witness: What do you mean?

Trial Examiner Leff: Mr. Belkin asked you do you want us to believe that such and such is true, when you said no, did you mean that you did not want us to believe that, or that it was not true?

The Witness: In regards to rotary shipping, I didn't give it much thought whether it concerned me or not. For that matter I never talked it over with anyone.

Q. (By Mr. Belkin): You never talked it over with any member of the licensed personnel on board your vessel? A. To my knowledge, no.

Q. And you relied on what you overheard the unlicensed personnel say about it and your own independent judgment of what you had read? A. That is right.

The Witness: Yes.

Trial Examiner Leff: They call it scuttle butt?

The Witness: Yes.

Trial Examiner Leff: On the lakes as well as out at the coast?

The Witness: Yes.

Trial Examiner Leff: Is it usual for sailors on board the vessel to talk about people who are outstanding in some respect or other?

The Witness: I do not quite understand your question.

Trial Examiner Leff: I mean if a man is prominently engaged in union activities, supposing he engages in it openly, wouldn't that become generally known aboard the ship in short order?

The Witness: Yes, the crew would discuss it.

Trial Examiner Leff: The crew eats in the same quarters as the officers?

The Witness: Wheelsmen, watchmen and oilers.

Trial Examiner Leff: Wouldn't such scuttle butt generally come to the attention of the officers?

The Witness: No, there is very little discussion like that. It's usually when they get by themselves.

Trial Examiner Leff: Don't you know what the sailors on board your vessel are talking about?

The Witness: It eventually gets around, yes.

Trial Examiner Leff: How long does it take to get around?

Mr. Ray: I object.

Trial Examiner Leff: I mean, does it take very long?

The Witness: No.

Q. (By Mr. Belkin): Now, while you were aboard the vessel, you received copies of the Pilot, I understand. A. Yes.

Q. How did you get them? A. Through the mail.

Q. Always? A. I picked them up myself in different places.

Q. Did anybody ever give you any? Someone aboard the ship or one of the officers hand you a copy and say, "Look at this," or just hand you one? A. I don't believe they ever did.

Q. As a matter of fact, is it not true that quite often the Pilot came aboard the vessel—your vessel, as it was docked in some shore? A. Yes.

Q. Is it not true they were brought aboard the vessel by members of the crew who picked them up on shore? A. That is right.

Q. So you didn't always get them by mail, did you? A. No, the mail is the most reliable way. Usually we get them through the mail.

Q. As a matter of fact, is it not true that Mr. Shartle on several occasions gave you a copy of the Pilot? A. No, he never gave me a copy.

Q. Is it your sworn testimony that at no time did he ever give you a copy of the Pilot? A. He never gave me a copy of the Pilot.

Q. Did you ever see him give a copy of the Pilot to anyone else? A. No.

Q. How long have you been aboard the Pittsburgh Steamship vessels? A. Since the spring of 1935. Eleven seasons.

Q. And you have, in the course of your sailing aboard the Pittsburgh Steamship vessels become familiar with the National Maritime Union and its attempt to organize the unlicensed personnel? A. Yes, fairly familiar.

Q. And you are also familiar, are you not, with the fact that the National Maritime Union puts a ship organizer on each vessel? A. I understand that is the practice.

Q. And you knew that in 1944 there was a union campaign on to organize the unlicensed personnel of the Pittsburgh Steamship Company? A. Yes.

Q. And therefore you knew there would be a ship's organizer of the National Maritime Union aboard your vessel? A. Possibly, yes.

Q. Did you, in the light of all that, ever make an attempt to find out who this ship's organizer was? A. No, it did not matter to me.

Q. You said that when Shartle handled the control of the winches—strike that. You stated, as a matter of fact, that Mr. Shartle was not permitted to handle the control of the winches both before and after the one incident when the line nearly broke? A. That is true.

Q. This was the one time that he handled that winch? A. I better amend that other. He had been instructed on how to use them but I didn't trust him completely with

them and this time that he did then the wire almost parted. That doesn't give a person much trust in another.

Q. I understand that.

Mr. Ray: Let him finish.

The Witness: So after that he didn't have as much opportunity as before.

Q. (By Mr. Belkin): As a matter of fact, he had had no opportunity before. A. I believe he had plenty of opportunity.

Q. Did you assign him to the job of handling these winches alone? A. He was at the controls and I was there to watch and assist him.

Q. Now, I ask you, Mr. Witness, at any time was he assigned by you to handle these winches without your being present? A. It is his regular station to handle the winches.

Q. Please answer my question. You can attempt to explain afterwards. A. Yes, he was assigned—that was his assignment, to handle the winches.

Q. That isn't my question. I am asking you, did you at any time prior to this incident to which you have referred, ever assign Shartle to handle the control of those winches alone? A. Not completely alone, no.

Q. In other words, your answer is no. A. No is right.

Q. So this is the first time Shartle handled the winches alone? A. Yes, we figured we had given him sufficient instructions.

Trial Examiner Leff: You don't have those winches on all the Pittsburgh lines—I mean ships?

The Witness: No; not on all the ships.

Trial Examiner Leff: This was rather a new vessel, was it not?

The Witness: Yes.

Trial Examiner Leff: Do all A.B.'s have to know how to handle such winches before they are hired?

The Witness: Not necessarily, no. We instruct them after they are hired.

Q. (By Mr. Belkin): As a matter of fact, the Olds is the newest ship in the fleet, is it not? A. There are three newer.

Q. It is the same type, is it not? A. The maritime boats came out since.

Q. In other words, the Olds is in the same class as the maritime boat, highly electrolized? A. The maritime boats aren't electric winches.

Q. The Olds is unique in its type amongst the Pittsburgh fleet? A. There are nine of them.

Q. Nine other boats that have electrical winches? A. Yes.

Q. The remainder of the fleet do not. A. No, that is steam winches.

Q. So that when you get an A.B. aboard your ship, the Olds, who has not had any experience in handling electrical winches you put him through a course of instruction? A. That is right.

Q. And you gradually give him more and more responsibility. A. That is right.

Q. Do you recall any time any other A.B.'s who did not handle these electrical winches properly? A. The balance that are A.B.'s had had experience with those winches.

Q. Yes.

Trial Examiner Leff: Let me ask you this. How many A.B.'s did you have on watch at that time?

The Witness: My wheelsman was an A.B.

Trial Examiner Leff: But the wheelsman is not assigned to handle these winches?

The Witness: Around at Duluth he handles the forward winches.

Trial Examiner Leff: Are there two sets?

The Witness: Yes.

Q. (By Mr. Belkin): As a matter of fact, the wheelsman is in a higher category than the watchman? A. Yes.

Q. And the more experienced A.B. is generally the wheelsman? A. Usually.

Q. And Shartle was not experienced enough to be a wheelsman, was he? A. I don't believe he was.

Q. I asked you, and I don't believe you answered my question, so I shall put it to you again,—to your knowledge was there any other A.B. aboard any Pittsburgh vessel on which you sailed who had made a mistake in handling the electric winches?

Mr. Ray: I think he should specify the time.

Mr. Belkin: I did. In the course of his sailing the Pittsburgh vessels.

The Witness: Undoubtedly there were more who made mistakes in handling them.

Q. (By Mr. Belkin): Now, at any time do you recall any of these men being discharged? A. The only one that I was on was the Olds so I couldn't carry on any farther.

Q. But you said you heard undoubtedly—or knew undoubtedly that there were men who did this? A. Yes.

Q. Now in your knowledge of that fact, did you also discover whether they were punished in any way for their mistake? A. There is always a chance for the first mistake, but repeatedly—

Q. I grant that. Now answer my question. Did you discover they were punished for their mistake? A. That is the only incident I know of.

Q. You just testified, after being sworn here, that you knew of other instances. A. I didn't say I knew, I said probably there were other instances.

Q. Do you know of any? A. No.

Trial Examiner Leff: How many mistakes did Shartle make in handling the winches?

The Witness: There was one definite one, and there is a number of times I caught it just in time to prevent a mistake.

Q. (By Mr. Belkin): But those other times you were present? A. Yes.

Q. And it was in the course of your instruction on how to handle these winches that he almost made a serious mistake? A. Yes.

Q. As a matter of fact, while you were present, he made no mistake, is that true? A. When I am instructing I take them myself, usually have them right there watching them closely.

Q. But the only time aboard that ship, according to your testimony, that Shartle made a dangerous error, which the second mate caught just in time, was that one incident to which you referred? A. Yes.

Q. And you weren't present at that time? A. No.

Q. So while you were present Shartle made no such mistake? A. He didn't make mistakes for the reason that I was running them and trying to teach him.

Q. Answer my question. A. No, he did not make a mistake right there.

Trial Examiner Leff: How long before Shartle was discharged did this mistake occur?

The Witness: I will make a guess and say two weeks.

Trial Examiner Leff: Two weeks before he was discharged?

The Witness: Yes.

Q. (By Mr. Belkin): You said it was your opinion that Mr. Shartle was not trustworthy. A. That is right.

Q. Will you tell us one occasion in which you found he was untrustworthy? A. The occasion I mentioned, painting in the hallway.

Q. Any other occasion? A. Yes, this incident that come up earlier regarding the splicing.

Q. Was that while you were supervising him? A. He was on my watch.

Q. Had you instructed him to take care of this splicing? A. I told him to splice on orders from the mate.

Trial Examiner Leff: You said there was an earlier incident. So the record will be clear, do you mean an incident to which you testified earlier or an incident which occurred earlier.

The Witness: I was referring to an incident in the previous testimony of Mr. Dobson.

Q (By Mr. Belkin): Had you made any inquiry of Mr. Shartle as to what his experience aboard ships had been before he came on the Olds? A. I knew he was an A.B.

Q. You don't know how long he had sailed? A. No.

Q. You assumed he hadn't sailed very long then, he was just a young fellow? A. He wasn't very old.

Q. Therefore you felt it was necessary to give him training in handling these winches and other necessary training? A. Yes.

Q. In the course of the past five years, have you found other A.B.'s trained by the maritime service who were relatively inexperienced? A. Yes.

Q. Have you given those men training in handling winches? A. Yes.

Q. Also training in leadership? A. Yes.

Q. Instructions on how to paint? A. Yes.

Q. Did you at any time point out to these other men that their paint jobs were being incorrectly done? A. Yes.

Q. And you corrected them a number of times? A. Yes.

Q. Have these other men whom you criticized for improper paint jobs been fired on your recommendation? Answer that question yes or no and then you may explain it. A. No.

Mr. Ray: Go ahead and explain it.

Mr. Belkin: I object to that, I don't think I should be interrupted.

Trial Examiner Leff: You suggested he explain it.

Mr. Belkin: But there was no need to explain it.

Trial Examiner Leff: Do you want to explain it?

The Witness: Yes.

Trial Examiner Leff: Go ahead.

The Witness: The other men after they were instructed endeavored to do better and correct the mistake they did before.

Q. (By Mr. Belkin): How long was Shartle aboard the ship? A. Three weeks I would say.

Q. You didn't give him much of a chance to improve. A. I believe three weeks is plenty time.

Q. How long did you give these other men? A. Other men?

Q. Answer my questions.

Mr. Ray: I object to the tactics used by counsel. He is answering the questions and I object to counsel's criticizing. He asks the question and continuously interferes with the answer.

The Witness: I believe two weeks is sufficient time.

Mr. Belkin: I move that be stricken as not responsive to the question.

Trial Examiner Leff: Granted. How much time did you give the other men?

The Witness: Two weeks is sufficient time.

Trial Examiner Leff: That still doesn't answer the question. How much time did you give the other men?

The Witness: That is difficult to say. It is my opinion that a man who doesn't learn to handle the winches in two weeks—

Mr. Belkin: You still haven't answered the question. How much time did you give the other men?

Mr. Ray: I submit that counsel should specify the men he is talking about.

Trial Examiner Leff: Yes, I agree with you What men have you got in mind?

The Witness: Well, this Cole, for instance, that came up, he learned very quickly.

Trial Examiner Leff: You never had trouble with him?

The Witness: No.

Trial Examiner Leff: Mr. Belkin is referring to the A.B.'s with whom you had trouble. Can you name some of them?

The Witness: There was an A.B. shipped aboard this year, he had never seen water before, and he picked those winches up and he was doing quite all right after a couple demonstrations on how to use them.

Trial Examiner Leff: You never had trouble with him?

The Witness: No.

Trial Examiner Leff: You referred to certain A.B.'s with whom you had had trouble.

Mr. Belkin: As I recall the answer of the witness, he testified that on several occasions he had criticized certain A.B.'s for the way they supervised the paint job. If you will name the men to whom you referred in your answer there.

The Witness: The men? Well, other than Shartle last year I didn't have an A.B. on my watch as watchman.

Q. (By Mr. Belkin): Who were these men you referred to? A. In previous years?

Q. All right, in previous years. Will you name some of these men? A. That is something that is mighty hard to do. The men come and go. I had a watchman in 1943, his name was Fisher, that I had to give a few pointers to.

Q. How long did he stay with the vessel? A. Till we laid her up.

Q. In other words he stayed from spring through until you laid up the ship? A. Yes.

Q. You really gave him a lot of time to learn? A. He didn't take long.

Q. Answer my question, did you or didn't you? A. Yes.

Q. Can you think of anyone else? A. No.

Q. But there were others, according to your testimony? A. Perhaps, yes.

Mr. Belkin: I guess that is all.

Trial Examiner Leff: Mr. Rosenfeld, have you any questions?

CROSS EXAMINATION.

Q. (By Mr. Rosenfeld): What is your station in the ship when she is loading? A. Loading, I assist the mate.

Q. What do you mean by that? You are one of the mates yourself, are you not? A. Yes, third mate, but I assist the first mate.

Q. Do you have any given position on the ship? A. No definite position.

Q. When the vessel is on the Lake, where are you stationed? A. In the pilot house where I stand my watch.

Q. Now you testified earlier that on one trip, as the ship was going into the Detroit River, that Shartle was called into the pilot house to steer. A. That is right.

Q. Who was present in the pilot house at that time? A. The wheelsman, John Mizner, who was at the wheel, Captain John Murray and myself.

Q. Who called Shartle into the pilot house? A. Captain Murray.

Q. How did he call him? A. Shartle was on lookout on the forecastle head. Murray called him.

Q. By telephone? A. By voice.

Q. How long did Shartle remain in the pilot house wheeling? A. Well, I will say half an hour.

Q. Did he handle the wheel all right? A. Yes, he was all right.

Q. This was in the river? A. Yes.

Q. Is it more difficult to wheel on the river than it is on the lake? A. Slightly more difficult, yes.

Q. Is wheeling a ship part of a watchman's duties? A. No, unless they were learning.

Q. It is part of the wheelsman's duties? A. That is part of the wheelsman's job.

Q. And wheelsman is a higher rating than watchman? A. That is right.

Q. Now, you have been sailing on these lakes for some eleven years? A. That is right.

Q. Do you know whether there are negroes in the engine or deck departments in any of these vessels? A. To my knowledge, no.

Q. And there are none on the Pittsburgh vessels? A. Not on the deck or engine department.

Q. And there are some steward departments which are manned by negroes? A. Yes.

Q. About nine? A. I don't know how many.

Q. But not on the ships? A. No.

Q. Have you ever heard talk on the Pittsburgh vessels about negroes coming into the deck or engine departments? A. No.

Q. You have never heard that mentioned at any time? A. No.

Q. Neither by the officers or the men? A. No, the officers never mentioned it.

Q. You never heard the unlicensed personnel mention it? A. No, never noticed it.

Q. You read the Pilot occasionally? A. Yes, I read it occasionally.

Q. Do you know what the policy of the National Maritime Union is with respect to Jim Crow?

Mr. Ray: With respect to Jim Crow?

Mr. Rosenfeld: Yes.

Trial Examiner Leff: Jim Crowism. Do you know what Jim Crowism is?

The Witness: I have a good idea of the principles, yes.

Q. (By Mr. Rosenfeld): Have you ever heard that discussed on the Pittsburgh ships or the Olds in 1944? A. No, I did not.

Q. Have you ever heard it discussed any place? A. No.

Q. Now, to bring negroes, or to favor negroes shipping in the engine or deck departments would be rather a departure from the prevailing practice on the lakes? A. That is right.

Q. And do you believe the National Maritime Union favors that practice?

Mr. Ray: I object to that question.

Trial Examiner Leff: Just a minute. If it is phrased this way I will allow it. Do you know whether the National Maritime Union favors that practice?

The Witness: I don't know whether they do or not, definitely.

Q. (By Mr. Rosenfeld): You have read the Pilot? A. Yes.

Q. Did you ever see the National Maritime Union's policy on the point of negroes mentioned in the Pilot? A. It said there was to be no discrimination.

Q. That means that negroes are to be given jobs in the same places as the white men? A. Yes.

Q. So you do know the policy of the National Maritime Union with respect to negro seamen? A. Yes.

Q. And is that in accord with employment practices on t' Great Lakes vessels as you have observed them?

Trial Examiner Leff: You have the testimony. I can draw conclusions from that.

Q. (By Mr. Rosenfeld): Yet you say you have never heard this policy which you have described discussed? A. No, never heard it discussed.

Q. Were you present when Shartle was splicing the cringle on the tow line? A. No, I wasn't present.

Q. How did you learn about it? A. Well, I left—I came in the windlass room where the splicing was taking place just after the mate had been in there and told them to walk off on the job.

Q. So you weren't there when the mate came up to Shartle? A. No.

Q. You don't know what Shartle was doing? A. No, I wouldn't say that.

Q. So all you know about it is what the mate told you? A. Yes.

Mr. Rosenfeld: That is all.

Trial Examiner Leff: Any questions, Mr. Ray?

Mr. Ray: That is all.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: We will take a five minute recess.

(A five minute recess was taken.)

Trial Examiner Leff: The hearing is in order.

GEORGE W. HECKEL, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?
The Witness: George W. Heckel.
Trial Examiner Leff: What is your address?
The Witness: 62 Hartshorn Drive, Painesville, Ohio.

DIRECT EXAMINATION.

Q. (By Mr. Hinslea): Mr. Heckel, what is your occupation? A. Marine engineer.

Q. And you hold—what licenses do you hold? A. Chief engineer.

Q. And what ship are you on now? A. Steamer Cornell.

Q. And did you fit the Cornell out this spring? A. I did.

Q. Have you been there ever since? A. Yes, sir, except one week. There was a lapse of one week.

Q. That was following the spring fit-out? A. Yes.

Q. Directing your attention to a meeting that was held on board the steamer Cornell in the spring of 1945; or just before you sailed, were you present at that meeting? A. I was.

Q. Who else? A. The whole crew except the galley.

Q. Who talked at this meeting? A. The captain spoke and I said a few words.

Q. What did the captain talk about, in substance? A. He talked about safety first, food rationing points, and certain working conditions aboard the ship, about the different hours, and days off, and so on.

Q. While he talked, did he talk about the union or say anything about the union or unions? A. Yes, he did.

Q. What did he say? A. He said that it makes no difference whether a man belongs to a union or don't belong to a union, makes no difference, a man has the same conditions aboard the ship whether he is a member or not of the union.

Q. Did he say anything else? A. He said, "To prove that there is a man right here, Vogt, he was with me last year and I hired him back again this year, he is a union man."

Q. In your presence, did he make any statements that —strike that out. During his statements as to unions at any time did he mention the CIO or the N.M.U.? A. He did not.

Q. Now, chief, did you have anything to say at this meeting? A. Yes, I did.

Q. Tell us what you said generally or in substance. What did you talk about? A. I mentioned a few things about safety first in my department, such as, some fellows are careless with tools, leave them lay around, we want to avoid that. Some have the habit of going around the engine with torn clothing, or his sleeve sticking out, those things were to be avoided because of the moving machinery, and oil laying around on the deck where the men walk, they are liable to slip, open floor plates that the men can walk into or step into, and so forth.

Q. Chief Heckel, during this talk at this meeting, did you at any time discuss unions? A. What was that question?

Mr. Hinslea: Will you read the question?

(Question read by the reporter.)

The Witness: I did not.

Q. (By Mr. Hinslea): Now, did you at any time call the union or members of the union any names? A. I did not.

Mr. Hinslea: That is all.

CROSS EXAMINATION.

Q. (By Mr. Belkin): What did you say Captain Lawless said about unions? A. He said that a man can belong to the union or he don't have to belong to a union, the conditions will be the same aboard the ship whether a man belongs to a union or does not belong to a union.

Q. And then he reached out and touched Vogt on the knee? A. Yes, and he said, "As proof of that here is a man who is a good union man, he was with me last year and I rehired him again this year."

Q. Then he reached out and touched Vogt on the knee? A. Yes, he touched him on the knee.

Q. You saw him? A. Yes.

Q. What did the captain say? I want that again, Mr. Heckel. What did the captain say about unions again? A. He said, it didn't make any difference to him, that a man could belong to a union or he don't have to belong, don't have to join, he is not prejudiced either way, whether he is a member of the union or not.

Q. And as proof of that what did he say about that? A. "As proof of that, here is a good union man. He was with me last year and he is with me again this year."

Q. And then he reached out and touched him on the knee?

Mr. Hinslea: Objection.

The Witness: I have given it three times.

Trial Examiner Leff: Three times is enough. Let's go off the record.

(Discussion off the record.)

Trial Examiner Leff: On the record.

Q. (By Mr. Belkin): Were you present when Captain Lawless testified earlier tonight—or this morning? A. Part of the time, yes.

Q. Did you hear him say what you just testified to? A. Did I what?

Q. Did you hear him say what you just testified to? A. Did I hear him say what I testified to?

Q. Yes. A. Yes.

Q. You also discussed this with Mr. Hinslea, I suppose? A. Some, yes.

Q. Did Mr. Hinslea or Mr. Ray read you the testimony as given by Mr. Vogt? A. No.

Q. Did they tell you what, in substance, he had said? A. Yes, some of it.

Trial Examiner Leff: Where was this meeting held?

The Witness: In the fantail of the ship.

Trial Examiner Leff: What is the fantail?

The Witness: The fantail is the aft-most part of the ship. It is quite a large compartment on this particular ship. It houses the steering engine and a few power tools.

Trial Examiner Leff: You had about thirty men present in the room at the time?

The Witness: I didn't count them.

Trial Examiner Leff: If you excluded the steward's crew you would have about thirty-two?

The Witness: About, yes.

Trial Examiner Leff: How were you sitting?

The Witness: I was standing up.

Trial Examiner Leff: Where were the men sitting, or were they standing up too?

The Witness: There were a couple of park benches, vice bench, parked all around. Some were standing, some sitting, some sitting on deck.

Trial Examiner Leff: Where were you standing when you spoke?

The Witness: Right in the center of the floor.

Trial Examiner Leff: Where was the captain standing?

The Witness: In the same place, next to me.

Trial Examiner Leff: The men were all around you?

The Witness: Yes.

Trial Examiner Leff: Right close to you?

The Witness: Right in front of me.

Trial Examiner Leff: When the captain spoke, were the men in front of him?

The Witness: Yes.

Trial Examiner Leff: Where was Vogt?

The Witness: He was on a park bench.

Trial Examiner Leff: Where was the park bench?

The Witness: Right in front of him.

Trial Examiner Leff: Vogt was sitting right in front of the captain?

The Witness: Yes.

Q. (By Mr. Belkin): Did you agree with anything the captain said here? A. I did not agree with anything, I didn't here. I said what I agreed with.

Q. You did agree with some of the things the captain said? A. I just got through saying what the captain said.

Q. Did you, in your address to the men, say you agreed with anything the captain said? A. No.

Q. Did you tell them you disagreed? A. No. I didn't say I agreed.

Q. With anything the captain said? A. No, I did not. I didn't use the word agree.

Q. Captain Lawless testified you got up and did agree. Do you deny that you did? A. I am saying I didn't agree.

Q. I mean according to Mr. Lawless, I mean according to his knowledge, you did agree. What is the truth about

that? Did you or did you not say you agreed with anything Captain Lawless had said. A. I didn't say I agreed with anything.

Q. You did not use that word? A. I didn't use the word agree.

Q. So if Captain Lawless made such a statement, he was in error? A. That is right. If he said that I said I agreed, he is in error because I didn't say so.

Q. You are familiar with the fact that the National Maritime Union advocates rotary shipping, are you not, Mr. Chief Engineer? A. Well, I suppose so.

Q. You are also familiar with the fact—strike that. Now, in the course of your voyage aboard the Cornell in 1944—

Trial Examiner Leff: Were you on the Cornell in 1944?

The Witness: No.

Q. (By Mr. Belkin): I am sorry. What ship was it, the Bunson? A. I wasn't on the Bunson. This was in 1945.

Q. This was in 1945, aboard the Cornell in 1945, did you at any time discuss rotary shipping with any of your assistants? A. No.

Q. Did you any time discuss it with any of the unlicensed personnel? A. No.

Q. You are very, very certain? A. Positive.

Q. You are as sure of that as anything you have said tonight, is that so? A. Yes.

Q. And did you ever discuss the negro question with anybody? A. No.

Q. Did you have any negroes under your supervision, Mr. Engineer? A. No.

Q. Have you ever had any? A. No.

Q. You wouldn't want any? A. I won't say that.

Q. Did you ever attempt to hire one? A. No.

Q. You have the right to hire anyone you please, don't you? A. Well, I hire my crew, yes.

Q. By the way, if the captain wanted to discharge a man in your crew, could he do that? A. No.

Q. Isn't he the man that is responsible for the overall conduct of the ship? A. He is, but he would come and see us first.

Q. Suppose he came to see you and you told him you didn't want to discharge a man, has he the authority to discharge him anyway? A. I suppose if it came right down to law, he would.

Q. Chief engineers are pretty touchy about their rights and privileges when it comes to hiring men and they generally insist that the prerogative be there?

Mr. Hinslea: Objection.

Trial Examiner Leff: How is that relevant?

Mr. Belkin: It isn't really.

Trial Examiner Leff: Then why ask?

Mr. Belkin: I am not attempting to burden the record at this time of the morning. I had a thought that it might be relevant but I won't have an argument on that question now.

Q. (By Mr. Belkin): Did you ever get a copy of the Pilot while you were aboard the Cornell? A. Yes.

Q. How did you get them? A. Well, I picked them up wherever I happened to see one laying around.

Q. Did anybody ever give you one? A. No.

Trial Examiner Leff: Did you get it in the mail?

Q. (By Mr. Belkin): By the way, captain— A. Don't call me captain—

Trial Examiner Leff: Wait a minute. You are at a hearing. Did you receive the Pilot in the mail?

The Witness: Did I?

Trial Examiner Leff: Yes, addressed to you?

The Witness: No.

Trial Examiner Leff: Did you ever receive any union literature addressed to you?

The Witness: Yes, I got a letter from Lawrenson.

Trial Examiner Leff: What else?

The Witness: That is all.

Trial Examiner Leff: In 1944 did you also get a pamphlet "N.M.U. Fights Jim Crow"?

The Witness: No, I did not.

Q. (By Mr. Belkin): You saw them aboard the ship, didn't you? A. I saw some, yes.

Q. Now, were you at the meeting of captains and chief engineers? A. I was.

Trial Examiner Leff: What meeting are you referring to?

Mr. Belkin: I didn't finish my question.

Trial Examiner Leff: Let's find out what meeting.

The Witness: March, 1945. I attended that meeting.

Trial Examiner Leff: How did you know what meeting he was referring to? How did you get that as part of the question he asked?

The Witness: I heard it asked here once before tonight.

Q. (By Mr. Belkin): Were you also present at the meeting of the captains and chief engineers in the spring of 1944? A. I was.

Q. You received instructions at that time on how to deal with the union question if it arose aboard your ship? A. Yes.

Q. And you received similar instruction in 1945? A. Yes.

Q. Now, Mr. Chief Engineer, what was the ship you sailed on in 1944? A. The Renssellaer.

Mr. Hinslea: Mr. Examiner, I would like to have an objection, and a continued exception if overruled, on the testimony of what occurred in 1944. It is improper cross examination, and if allowed, this witness certainly ought to be the Board's witness. Now the Board has suggested that they haven't had full opportunity to investigate this case, that the witnesses haven't been available, they haven't had an opportunity to talk to the licensed officers, and this is the first opportunity, so I submit that if they now want to go into 1944 activities and go beyond the realms of direct examination, that the Board make this witness their own witness.

Trial Examiner Leff: I do not understand. Doesn't the complaint cover the year 1944? It does, as I remember it.

Mr. Hinslea: Yes, but I still insist, if the Board wants to pick up those witnesses and go to other years and prove up the charges they have made, then these should be their witnesses.

Trial Examiner Leff: There is one thing I don't understand, what do you mean by other witnesses?

Mr. Hinslea: 1944.

Trial Examiner Leff: 1944 is the year alleged in the complaint.

Mr. Hinslea: Yes, I agree with that. They have made a charge that this company, commencing March 15, 1944, and continuing thereafter, have engaged in anti-union activities. Now, they produce a witness, Mr. Vogt, who testifies for them and their case in chief, as to certain statements this witness Heckel has made. Now the respondent has produced Heckel for only one purpose—to refute the statements as alleged to have been made by him by Vogt in 1945.

Mr. Belkin: Surely.

Trial Examiner Leff: Let him finish.

Mr. Hinslea: Now, I submit that if they want to go beyond—back in 1944 to make good their charges, this witness now should become the Board's witness and they be bound by whatever he says.

Trial Examiner Leff: You have stated your position before. I construe any evidence that may relate to unfair labor practice on board any of the respondent's vessels in 1944 as being relevant and material to the issues of the case. With respect to the suggestion of Mr. Hinslea that I rule from this point on the witness be considered the Board's witness, I decline to so rule. The objection is overruled, the respondent has an automatic exception.

Q. (By Mr. Belkin): Mr. Heckel, there was an election on board the Renssellaer in 1944, wasn't there? A. Yes.

Q. Who was the ship's organizer aboard the Renssellaer on behalf of the National Maritime Union? A. I don't know.

Q. You are familiar enough with the policies of the N.M.U. to know that they put a ship's organizer on every vessel? A. I don't know enough about the policies of the N.M.U.

Q. You never heard? A. I don't know what their policies are.

Q. Haven't you read the Pilot? A. I read the headlines and look at the pictures.

Q. Is that where you stop, the headlines and the pictures? A. Yes.

Q. Never read any of the other matter? A. No.

Q. Have you ever read any of the other literature the union has issued? A. No.

Q. You are familiar with their rotary shipping list policy? A. No.

Q. You never heard it discussed? A. I may have heard it several times.

Q. Yet you are not familiar with it? A. No.

Q. Are you familiar with their policy on the Jim Crow issue? A. No.

Q. Never heard it discussed? A. I may have a few times.

Q. Yet you don't know anything about it? A. No.

Q. Have you at any time while on board the Rensselaer prior to June 6, 1944, discussed the election with any member of your crew? A. No.

Q. D'd you ever hear them discuss it? A. No.

Q. So far as you knew there was no discussion of the election among the crew at all? A. No.

Q. Did you discuss the election with any member of the licensed personnel while you were aboard the Rensselaer in 1944? A. No.

Q. When did you first know that there was going to be an election conducted aboard the Renssellaer? A. They informed us at the meeting that there was an election coming.

Q. You mean this meeting at Hotel Hollenden in the spring of 1944? A. Yes.

Q. That would be March? A. Yes, in March.

Q. So that since March, 1944—strike that. So that from March 4, 1944, to June 6, 1944, you knew an election was to be conducted aboard the Renssellaer? A. Yes.

Q. And in that period of time, it is your sworn testimony that you never discussed it with anyone? A. No.

Q. As a matter of fact, you never heard it discussed by anyone? A. No.

Q. That is all.

CROSS EXAMINATION.

Q. (By Mr. Rosenfeld): Did you hear about the union election on your ship in the year 1945? A. No.

Q. You never heard— A. About an election for 1945?

Q. Yes. A. Well, I heard the union had requested an election for 1945.

Q. Where did you hear that? A. I saw that in the Pilot.

Q. Have you finished your answer? A. Yes, I am through.

Q. Did you hear about it from the company? A. Yes, they mentioned that at the meeting.

Q. Which meeting? A. The March 1945 meeting.

Q. Did Captain Lawless tell you anything about it? A. No.

Q. Did you ever discuss it with Captain Lawless? A. No.

Q. Did you ask Lawless any questions about it?

Q. Did you ever ask any company officials any questions about it? A. No.

Q. Did you ask anybody any questions about it? A. No.

Trial Examiner Leff: What was said at the meeting at the Hotel Hollenden with reference to the 1945 election?

The Witness: That the union has requested another election.

Mr. Hinslea: Has he finished?

Trial Examiner Leff: Are you finished with your answer?

The Witness: I can add a little more. The union had requested another election and they wanted us to be fair, abide by the rules, that if the election should—whenever it was called, show no partiality.

Trial Examiner Leff: Are you finished with this line of questioning?

Q. (By Mr. Rosenfeld): Who at that meeting advised you about the forthcoming election in 1945? A. I don't recall. One of the officers.

Q. Did he deliver a regular report to the meeting, a regular speech? A. There was any number of them, eight or nine of them spoke.

Q. Was this information given in the course of a speech or in response to questions? A. No, in the course of a speech.

Mr. Rosenfeld: That is all.

Mr. Belkin: I have one more question.

Trial Examiner Leff: Go ahead.

Q. (By Mr. Belkin): Mr. Heckel, you say you found out about the election from reading about it in the Pilot, is that right? A. Yes.

Q. Is this one of the—strike that out. On this occasion when you read the Pilot, you read more than the headlines and saw the pictures, is that right? A. No.

Q. You got it just from the headlines? A. No, the headlines at the top of the articles.

Q. And you didn't read on down to get the details of the election? A. No.

Mr. Belkin: That is all.

Trial Examiner Leff: Mr. Hinslea?

RE-DIRECT EXAMINATION.

Q. (By Mr. Hinslea): Mr. Heckel, this captain and engineers' meeting, that is a meeting that brings all the captains and engineers together in Cleveland? A. That is right.

Q. Now, that meeting has been going on for many years, has it not? A. Have met a few years, as long as I can remember.

Q. And at this meeting, are not various topics discussed? A. Yes.

Q. What are some of the topics that are discussed? A. Well, the performance of the ships, safety first, and the general operating policies of the company are discussed. If anybody has any questions to bring up in the operation of their particular ship, they can do so, and various other things.

Mr. Hinslea: That is all.

Q. (By Mr. Rosenfeld): I would like to ask—chief, was there any difference in the working conditions on the Pittsburgh ships between 1943 and 1944? A. No.

Mr. Ray: I object to that.

Trial Examiner Leff: How is that relevant?

Mr. Rosenfeld: In connection with the direct examination they had about the meeting. I would like to find out more what was discussed about rules and working conditions.

Trial Examiner Leff: I am not interested in that. Objection sustained.

Mr. Rosenfeld: I think the union fits into the picture.

Trial Examiner Leff: Perhaps, but there is no allegation concerning that. The witness is excused.

(Witness excused.)

Trial Examiner Leff: I should like to inquire at this time whether counsel can stipulate whether or not any petition for certification and for an election was filed by the union for an election in 1945?

Mr. Rosenfeld: Yes.

Mr. Belkin: I am willing to stipulate there was none.

Mr. Hinslea: I have no knowledge there was a petition filed.

Trial Examiner Leff: Naturally the respondent would not know whether there was a petition filed. The respondent can only stipulate whether the notice of a petition came to his attention and I understand Mr. Hinslea to state that no such notice did come to the respondent. We will take a five minute recess.

(A short recess was taken.)

Trial Examiner Leff: The hearing is in order.

Louis T. Burns, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?

The Witness: Louis T. Burns.

Trial Examiner Leff: What is your address?

The Witness: Marine City, Michigan.

Trial Examiner Leff: Marine City, Michigan.

The Witness: Yes.

Trial Examiner Leff: Proceed.

Direct Examination.

Q. (By Mr. Hinslea): You are first mate of the steamer Cornell? A. That is right.

Q. You haven't been on her all season? A. No.

Q. When did you join the Cornell this season? A. The 25th of April.

Q. She had been operating for some weeks? A. Yes.

Q. What watch do you stand? A. Four to eight now.

Q. Do you remember a watchman on board your ship by the name of Vogt? A. I'll say I do.

Trial Examiner Leff: Are you talking about 1945 now?

Mr. Hinslea: 1945.

Q. (By Mr. Hinslea): And was he on your watch? A. Yes.

Q. Referring to your conversation, Mr. Burns—strike that. Did you ever have any conversation with Vogt while he was on board the ship that had anything to do with the union or unions or union issues? A. No.

Q. Did you ever at any time tell Vogt that the National Maritime Union were agitators and communists? A. No.

Q. Did you ever discuss the negro issue with him? A. No.

Mr. Hinslea: That is all.

CROSS EXAMINATION.

Q. (By Mr. Belkin): Have you been off the boat for some time? Is that it? A. What do you mean?

Q. I understood from the direct examination. A. I was on another boat this spring, I was on the General Orlando M. Poe.

Q. What boat did you ship on in 1944, Mr. Burns? A. The Maunaloa.

Mr. Hinslea: That is named after a volcano.

Trial Examiner Leff: Where is that, in Honolulu?

Mr. Belkin: Now, if you don't know that.

Q. (By Mr. Belkin): Mr. Burns, is that a Pittsburgh boat, too? A. Yes.

Q. Were you first mate on that? A. Yes.

Q. Did you have a union election aboard that ship? A. Yes.

Q. When did it occur? A. In June sometime.

Mr. Hinslea: May I have the same objection?

Trial Examiner Leff: Yes, and the same ruling.

Q. (By Mr. Belkin): While you were on the Maunaloa, did you see the pamphlet "N.M.U. Fights Jim Crow"? A. I may have.

Q. Well, did you? A. No.

Q. It is your sworn testimony that at no time did you see— A. That is right.

Q. That at no time during the year 1944 did you see the pamphlet "N.M.U. Fights Jim Crow" aboard your ship? A. No.

Q. Did you at any time see a reprint of the speech by Congressman Bradley? A. Yes.

Q. When did you see that? A. Oh, I don't know. It was during the season sometime.

Q. Before June, 1944, or after? A. I couldn't tell you.

Q. Did you at any time in the spring of 1944 receive any letters or communications from the company about the election? A. No.

Q. When did you first know there was going to be an election aboard the Maunaloa? A. There was talk of it in the spring.

Q. Who talked about it? A. Different members of the crew.

Q. To you? A. No.

Q. Well, how did you know? A. Well, there is talk around the ship, you know. I got ears.

Q. That is it. Did you hear them talk? What did you use your ears for? A. For digging.

Trial Examiner Leff: For what?

The Witness: I dig in them. You know, for yellow stuff.

Q. (By Mr. Belkin): So you did hear the men discuss the forthcoming election? A. That is right.

Q. That is the only way you know about it? A. Yes.

Q. Did you receive any notice from the company that there was going to be an election? A. I didn't, no.

Q. Did the captain receive any, to your knowledge? A. Yes.

Q. You are first mate? A. That is right.

Q. I understand the first mate is executive officer of the ship? A. That is right.

Trial Examiner Leff: I thought the captain was.

Mr. Belkin: Well, I understand—of course I am no expert on this subject—an executive officer is one who carries out the captain's orders and that to him some of the captain's responsibilities are delegated.

The Witness: I have never heard him called an executive officer.

Q. (By Mr. Belkin): There was some testimony at the hearing this morning, by counsel for the company, that that was his classification. A. An executive officer doesn't stand watch.

Q. So in other words, the first mate is not an officer? A. Just first mate.

Q. The first mate carries out the orders of the captain? A. That is right.

Q. Have you in your capacity as first mate ever had an opportunity to recommend somebody's discharge? A. Recommend it?

Q. Yes. A. I imagine I have.

Q. Do you mean you did make such recommendations to the captain? A. Yes.

Q. And I suppose he acted on your recommendation? A. Either yes or no.

Q. So the final authority as to the discharge is the captain? A. Yes.

Q. Have you ever discharged a man without asking the captain about it? A. Yes.

Q. On how many occasions? A. Three or four maybe.

Q. In the last year? A. No.

Q. In 1944. A. No, in the last three years I have.

Q. Did you do that in 1944? A. Yes, I did.

Q. Did the captain ask you why you discharged the man? A. He wasn't aboard at the time.

Q. Have you at any time discharged a man without consulting the captain when the captain was aboard? A. No.

Q. That is a violation of the company's rules—strike that. It would be a violation of the company's rules for you to fire a man without consulting the captain if the captain is aboard? A. No, it would not be a violation.

Q. Do you know of any instance in the last three years when any first mate on a Pittsburgh steamship fired a man while a captain was aboard without consulting the captain? A. Not on the ship, I don't.

Trial Examiner Leff: Is it the usual practice for the first mate to consult the captain?

The Witness: It is for me, yes.

Trial Examiner Leff: Have you ever received any instructions on that?

The Witness: Yes.

Trial Examiner Leff: From whom?

The Witness: The captain.

Trial Examiner Leff: The captain on your ship?

The Witness: Yes.

Q. (By Mr. Belkin): What was his name? A. Harbottle.

Q. What did he say? A. He just said that if there was any man to be fired he wants to know about it. He has to know about it now because he signs the checks.

Trial Examiner Leff: Does the first mate ever sign checks?

The Witness: He countersigns it.

Mr. Belkin: The captain signs and you countersign.

The Witness: Yes.

Trial Examiner Leff: Do you need two signatures on the check to make it negotiable?

The Witness: I don't know about that.

Trial Examiner Leff: Or to make it good?

The Witness: I don't know about that.

Q. (By Mr. Belkin): In other words, you need two signatures? A. Yes.

Q. Now, Mr. Burns, were any notices posted in your ship, the Maunaloa, in the spring of 1944, announcing the fact that there would be an election aboard the ship? A. That is right. It was posted under a glass.

Q. Did you post it? A. No.

Q. So you knew from reading that notice that there was going to be an election? A. Yes.

Q. In other words, you knew that fact from that source in addition to hearing the men talk about it? A. That is right.

Q. Who was the union organizer aboard your ship? A. I don't go around asking aboard the ship.

Q. I know you don't but who was he? A. I don't know that there was one aboard there. If I knew I wouldn't have asked him.

Q. You know that generally the National Maritime Union puts a union organizer aboard each ship when it is

conducting a campaign for an election? A. I don't know it.

Q. You are not familiar with that? A. No.

Q. Did you ever read the Pilot? A. I may have glanced through it once in a while.

Q. Did you get any copies of the Pilot in the spring of 1944? A. I don't remember that.

Q. How did you get copies of the Pilot when you did glance through it? A. Well there is some in the clothing store in Conneaut laying right on the stand that anybody can take, so I never miss them if I can get hold of them.

Q. You read each one you can get? A. Not page to page, the lake news, that is all.

Q. But you do read—let's put it this way. You do pick up every issue of the Pilot that you find in the clothing store in Conneaut? A. Not every one, no, just one.

Q. Did you pick up one at the time? A. No, no, just one, not one at a time.

Trial Examiner Leff: Mr. Belkin does not mean to imply that you pick up the bundle. There might be ten copies.

The Witness: I don't take ten copies and ditch them. I take one.

Trial Examiner Leff: Every time a new issue comes out you take one copy and leave the rest there?

The Witness: That is right.

Q. (By Mr. Belkin): So that is the only way you ever read the Pilot? A. Yes.

Q. You never seen one aboard the ship? A. Yes.

Q. Do you read them when you find them aboard the ship? A. If it is a late date I do.

Q. Now, in the course of reading the Pilot you have discovered, I suppose, that the union sends organizers out aboard the ships? A. I don't read that far.

Q. You just read selectively? A. I just read the news is all that interests me.

Q. You never read about the union policies and campaign? A. Never.

Q. You never read about the union policies on rotary shipping? A. Not a bit.

Q. You never heard anything about it? A. Never.

Q. While you were on the boat Maunaloa, did you see a copy of the pamphlet "N.M.U. Fights Jim Crow"? A. No, I did not.

Q. At no time? A. At no time.

Q. Ever hear anybody talk about that issue? A. Never.

Q. How many men were there aboard the Maunaloa last year? A. Thirty-six.

Q. Counting the officers and licensed personnel? A. Yes.

Q. You ate with some of the men, didn't you? A. Ate with them? Sure, I ate with the men.

Q. And you worked with the men? A. Yes.

Q. And at no time you heard them discuss any of these issues? A. No.

Q. Did you know that Vogt was a union organizer? A. No, I did not.

Q. At no time? A. At no time.

Trial Examiner Leff: Do you know it now?

The Witness: If you tell me he is, I will probably know it.

Trial Examiner Leff: But independently of what anybody tells you here, what you have heard in the hearing room.

The Witness: I don't know he is an organizer.

Q. (By Mr. Belkin) Do you know he is a union man? A. Yes.

Q. How did you find that out? A. He told us, he said he was a good union man.

Q. Had you ever discussed that with him before he went off? A. Never.

Q. When he said that he was a good union man, what did you say? A. What could I say?

Q. I asked you, what did you say? A. I didn't say a word.

Q. Was anyone else present at the time when you discussed this with Mr. Vogt? A. No.

Mr. Belkin: That is all.

CROSS EXAMINATION.

Q. (By Mr. Rosenfeld) Mr. Burns, what is your position when you are on watch—position in the ship when you are on watch? A. First mate.

Q. Where do you stand? A. In the pilot house.

Q. You say you are on the four to eight watch? A. Yes.

Q. In the beginning of the season, did you run the watch two to six, six to ten, and ten to two?

Trial Examiner Leff: What do you mean?

Mr. Rosenfeld: They have changed the watch hours, and I just want to correct that—clarify it for the record.

Trial Examiner Leff: You mean all that information I have learned about sailing ships is useless now?

Mr. Rosenfeld: Apparently they are sailing on ocean hours now.

Q. (By Mr. Rosenfeld) Now, at the time that Bob Vogt was on the ship the watches ran from two to six, six to ten, and ten to two? A. That is right.

Q. Your watch was two to six? A. That is right.

Q. Was Bob Vogt ever up in the wheelhouse at the time you were on watch? A. No.

Q. At no time? A. At no time.

Q. During the night watches? A. He was on the forecastle.

Q. He was at no time called to the wheelhouse? A. At no time.

Q. Was the wheelsman ever relieved during the watch? A. Yes.

Q. Who relieved him? A. The deck watch.

Q. Isn't it customary for the watchman to relieve the wheelsman? A. Yes, but Vogt didn't want to relieve.

Q. So it is your testimony that during the entire time Bob Vogt was on the Cornell with you he was never in the wheelhouse? A. Yes, he was wheeling for a couple of trips.

Q. So he was in the wheelhouse? A. Yes, but he wasn't watchman when he was up there.

Q. Who would be up in the wheelhouse when Vogt was wheeling besides you and Vogt? A. Vogt and the watchman.

Q. And you? A. Yes.

Q. Did you ever talk among yourselves? A. No.

Q. Never spoke to one another? A. We talked among ourselves, yes.

Q. What were the subjects of conversation? A. There are too many women in the place. Like all sailors' conversations.

Q. Did you ever talk about anything else? A. No, we never. Talked about anything at all, anything that came into our head.

Q. What were the things that came into your head? A. Well—you know.

Q. Mr. Burns, you said there was a prime subject of conversation, what was the secondary subject? A. Yes, talked about farming.

Q. What else? A. Sailing.

Q. Anything else? A. There isn't much else to talk about, is there?

Trial Examiner Leff: Let's proceed.

Q. (By Mr. Rosenfeld) The fact that Vogt was a member of the union was pretty well known on the ship. A. Not that I know of.

Q. The captain knew about it? A. Not that I know of.

Q. You had never heard it mentioned on board the ship while you were there that Vogt was a member of the union? A. No.

Q. The captain never mentioned it? A. No.

Q. The engineer never mentioned it? A. No.

Q. None of the unlicensed personnel mentioned it to you? A. Never.

Q. In other words, you were the only member aboard the ship that didn't know he was a member. A. I was.

Q. Was there any reason why the crew kept it a secret from you?

Mr. Ray: I object to that question. The other members of the crew have testified.

Mr. Rosenfeld: I thought I heard—

Trial Examiner Leff: Sustained. You were arguing with him. He conceded probably your argument might be true.

Q. (By Mr. Rosenfeld) So that at no time did any question which could in any way be related to the Na-

tional Maritime Union arise while you were in the wheelhouse during the nighttime watches or daytime watches? A. What was the question?

Q. Let me reframe it. So that at no time while you were in the wheelhouse with Vogt was the question of the union ever brought up in any form? A. Never brought up.

Q. Vogt never mentioned to you that he was a member of the union? A. Never.

Q. He never mentioned the Pilot to you? A. Never.

Q. He never asked you whether you had read it? A. Never.

Q. You never mentioned anything in the Pilot to Vogt? A. No.

Q. Never discussed the effect that organization of the Pittsburgh fleet by the National Maritime Union might have? A. No.

Q. No more questions.

Trial Examiner Leff: Any re-direct? The witness is excused.

(Witness excused.)

Trial Examiner Leff: We will take a short recess.

(A short recess was taken.)

Trial Examiner Leff: The hearing is in order.

Solomon James Barber, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?

The Witness: Solomon James Barber.

Trial Examiner Leff: What is your address?

The Witness: 3400 Kawkawlin Road, Bay City, Michigan.

Direct Examination.

Q. (By Mr. Hinslea): Mr. Barber, you are a sailor? A. Oh, sure.

Q. What ship are you on? A. The Cornell.

Q. How long have you been on the Cornell? A. Since the 14th day of March, 1945.

Q. In what capacity? A. Oiler.

Q. Mr. Barber, what is the fact as to whether or not this spring before the ship started out on navigation that a meeting was held of the ship's crew in the fantail of the vessel? A. There was.

Q. Did the captain speak? A. He did.

Q. Now, generally, what did he speak about? A. Well, there were several things. One thing was on the safety, several different things on that, on rationing.

Q. Did he speak about the unions? A. Well, he mentioned something about a man not having to belong to the union to be on the ship, or if he did belong, it was immaterial, equal one way or another, no privileges given him.

Q. Was anything mentioned that he didn't like the CIO or the N.M.U.? A. Not at the meeting.

Q. Did he use the word CIO or N.M.U.? A. Not that I heard.

Q. You were at the whole meeting? A. I was at the whole meeting.

Q. Were you in a position that you could hear them? A. It couldn't have been over ten, twelve feet at the most.

Q. The chief engineer also spoke? A. He did.

Q. Did he say anything about the union? A. He did not.

Q. Did he call the union any names? A. He did not.

Q. In other words, as you heard him, he at no time mentioned the word union? A. No.

Q. What did he talk about? A. He talked about safety, such as looking around on the plank, stage, leaving tools lying around, watching any machinery, not having any loose clothing.

Cross Examination.

Q. (By Mr. Belkin) Now, Mr. Barber, have you sailed on the Pittsburgh Steamship Company's vessels before? A. I have not.

Q. What vessel were you on last year? A. I was on the car ferry at the City of Saginaw.

Q. Does that vessel carry union men? A. All union.

Q. What union? A. The National Maritime Union.

Mr. Hinslea: I object, how is it pertinent?

Trial Examiner Leff: I will allow the question.

Q. (By Mr. Belkin) Did you belong to the N.M.U.? A. I did.

Q. Do you belong now? A. Not now. I was paid up and in good standing until the 16th of February.

Q. You are on the Cornell now? A. Yes.

Q. And no one aboard that ship has approached you and asked you to retain your membership? A. They have not.

Q. Do you know whether anyone else aboard the ship has been asked to join the union? A. Not that I know of.

Q. There has been no talk about it at all on the ship? A. No, there hasn't.

Q. Are you familiar with the fact, Mr. Barber, that the union is attempting to organize the personnel, unlicensed personnel of the Pittsburgh Steamship fleet? A. I am now.

Q. When did you find that out? A. Just recently, since this has come up.

Q. How recently? A. I heard it off and on in the last three weeks, something like that.

Q. Since what has come up? A. This hearing.

Q. Who told you about this hearing? A. The first I heard about it was when they were in—I think—Two Harbors.

Q. Who told you about it there? A. I was talking to Mr. Hinslea here. Or was it? It was a man on the boat.

Q. Either Mr. Hinslea or a man on the boat?

Mr. Hinslea: It was Mr. Hinslea.

Q. (By Mr. Belkin) Before that time you were unfamiliar with the fact that the union was attempting to organize the unlicensed personnel? A. Yes.

Q. Do you read the Pilot regularly? A. No, not regularly.

Q. Have you seen any Pilots this spring? A. Maybe two or three.

Q. Did you read them? A. Not all the way through. Glance at them.

Q. Did the Pilot, the ones you read, convey the information to you that the union was attempting to organize the Pittsburgh Steamship vessels? A. Not that I paid attention to.

Q. Are you familiar with the union policy as far as rotary shipping is concerned? A. I am not.

Q. Did you ever hear anybody discuss it aboard your ship? A. No.

Q. Are you familiar with the union policy on the Jim Crow issue? A. I know nothing about that.

Q. Did you ever hear anyone discuss that question aboard your ship? A. I have not.

Q. You say you were a member of the CIO in 1944? A. Starting July 3d.

Q. Now, did you read the Pilots while you were a member of the CIO? A. Part of them.

Q. In the Pilots you read, there were pictures of negroes who were officers and members of the union? A. There were pictures but I didn't pay much attention to them.

Q. What little attention you did pay conveyed the information to you that the union had a position on the Jim Crow issue, did it not? A. I wouldn't say it did.

Q. Even though you saw the pictures of these negroes in the Pilot, you received no impression at all that the union had a policy on that question? A. I did not.

Mr. Hinslea: The same objection on this question I made previously.

Trial Examiner Leff: About what?

Mr. Hinslea: Improper cross examination. This goes back to 1944 when this witness was on the Saginaw, belonging to the CIO, is entirely new evidence, and the witness should be the Government's witness.

Trial Examiner Leff: I thought he was talking about 1945.

Mr. Belkin: I am talking about 1944.

Trial Examiner Leff: Was he with the Pittsburgh Steamship Company?

Mr. Belkin: No, he wasn't. I am checking his credibility about what he knows about these issues.

Mr. Hinslea: There was no credibility as far as this man is concerned on union issues because there was no question on it.

Trial Examiner Leff: Credibility is always an issue.

Mr. Hinslea: That isn't the way the examiner ruled on other issues.

Trial Examiner Leff: Proceed.

Q. (By Mr. Belkin) In other words, in reading Pilots and information like that you don't give the things you read any particular attention? A. No, I don't.

Q. When you hear things spoken to you, do you give that greater attention than things you read? A. Pertaining to things I am taking care of, I pay strict attention, but outside of that I keep all things off my mind.

Q. So that when you heard Captain Lawless and Chief Engineer Heckel speaking at the meeting in the spring of 1945, you paid very particular attention to that, although you don't give attention to things you read? A. That is right.

Q. So you remember almost exactly what was said? A. I wouldn't say the exact words but—I don't think I could say the same words they did.

Q. But you remember practically everything they said? A. Yes.

Q. So there is nothing in the speech they gave that you haven't told us? A. Not a thing.

Q. In some of your answers to questions by counsel for the company, you made this answer, "Not that I heard." Did you mean by that there were some things that you don't recall? A. No, I would say that is just a way of saying the expression yes or no.

Q. What do you mean by that, yes or no? A. What was the question over again?

Q. I don't recall the particular question.

Trial Examiner Leff: I think it is fair that you should direct the witness' attention to the particular question when you ask a question of that kind.

Mr. Belkin: I am going to.

Q. (By Mr. Belkin) As you recall, Mr. Hinslea was reading what seems to be a quotation from our record and he asked you, did Captain Lawless—

Mr. Hinslea: If he used the word CIO or N.M.U. in his talk.

Q. (By Mr. Belkin) Then you said, "Not that I heard." A. If that was the question, no.

Q. So that in other words, he might have said this and you might not have heard it? A. If he said it, I would have heard it.

Q. Who is your supervisor aboard your ship? A. Mr. Heckel.

Q. Do you work under his supervision? A. No, under the first assistant.

Q. But he has supervision over all your activities? A. Yes.

Q. He has the power to fire you if he wished? A. Yes.

Q. Has Mr. Heckel talked to you about your coming down today? A. He mentioned it this morning.

Q. Had he talked to you before that? A. Not to any extent. I was called up to the captain's office the day I talked to the lawyer here.

Trial Examiner Leff: Before you were called up to the lawyer, did anybody ask you if you knew anything about the speech?

The Witness: Nothing at all.

Trial Examiner Leff: Didn't the chief assistant ask you?

The Witness: Not a thing.

Trial Examiner Leff: Did Mr. Heckel ask you?

The Witness: Nothing.

Trial Examiner Leff: Were any other people called up from the engine crew to the captain's office?

The Witness: I believe Mr. Donly (?) was called up there that night.

Trial Examiner Leff: Who else?

The Witness: I have no idea.

Trial Examiner Leff: Do you know why you were one of those who were subjected to be called?

Mr. Ray: I object to that. The purposes why he was talked to by lawyers of the company, and I object to the questioning, it is improper. I would like a ruling on that.

Trial Examiner Leff: The questions have been asked and answered. The time to make an objection is at the time the question is asked.

Mr. Ray: I ask you to make a ruling. If not I move to strike it out.

Trial Examiner Leff: Motion is denied.

Q. (By Mr. Belkin): Mr. Barber, how many of the men that were working in the aft end of the ship were on the ship at fit-out with you? A. You mean now?

Q. Yes, still with the ship. A. Well, there is one oiler.

Q. What is his name? A. Ben Chilsn.

Q. Who else? A. Dewey Rekstrode.

Q. Who else?

Mr. Hinslea: That is all they have.

Q. (By Mr. Belkin): Now, you testified another man had been called up with you. A. F. Donley (?).

Q. Wasn't he on the ship at fitout? A. Yes.

Q. He is an officer? A. Yes.

Q. Any other member of the personnel, in the unlicensed personnel, who were on the ship at fit-out? A. Not to my knowledge.

Q. But there might be some whom you may have forgotten? A. Not that I know of.

Q. Now, in the forward end, how many men are still with the ship who were with the ship at fit-out? A. I don't know for sure because I don't pay any attention to the forward end.

Q. You never communicate with those men? A. I talk to them on deck, that is about all.

Q. Don't you eat with the men—

Mr. Hinslea: Mr. Examiner, I don't know that there is a charge that our failure to produce every witness on the steamer Cornell is to be construed as holding out testimony.

Trial Examiner Leff: I don't think that is necessary, to produce fifteen corroborating.

Mr. Hinslea: Why is this questioning going on?

Trial Examiner Leff: I consider it is because this witness was called into the captain's office.

Mr. Hinslea: He has said what he knows, he doesn't know. How can an oiler know all the men I interviewed on the ship.

Mr. Belkin: I am not asking that question. I am asking what men were on the ship now that were with the ship at fit-out?

Mr. Hinslea: He has answered that. He said he didn't know, didn't pay attention.

Mr. Belkin: I am going into his credibility on that question. I will reframe it.

Q. (By Mr. Belkin): I was asking you whether you don't eat with the men on the forward end? A. I am on watch, where I have to wait and relieve off watch.

Trial Examiner Leff: Talk slower.

The Witness: I hurry off watch, hurry back, all I have time to do is go up and eat. When I am relieved my round I have got to wash up, eat, come back down in time to make another round.

Q. (By Mr. Belkin): In the course of eating, you see no one? A. I see, but I pay no attention. I couldn't possibly help but see, there are six men at the table at the time. If I looked right at them I'd know who they were but I don't pay any attention.

Q. You have been with these men during the 1945 season? A. Some of them.

Q. It is now August. A. Yes.

Q. In the course of your living with these men twenty-four hours a day on board this ship, is it your sworn testimony that you don't recall who they are?

Trial Examiner Leff: At 7:30 a.m., after a long night session, I think you are laboring this point too much.

Mr. Belkin: Let me labor it.

Mr. Hinslea: Objection.

Trial Examiner Leff: I think you have been over that twice already. I sustain the objection.

Q. (By Mr. Belkin): Are there any men, Mr. Barber, aboard your ship in the forward crew who were with the ship when the ship fitted out? A. Yes.

Q. Will you name them? A. Well, there is a wheelsman, Doc Hires, and another wheelsman they call Cookie, don't know what his name is, and a fellow I call Red, his right name is Bruce. I don't know what his last name is.

Q. Who else? A. That is about the only ones that I talk to much or really know when they did come on.

Q. Were these men present at the time Captain Lawless and Chief Heckel spoke to the crew? A. They were.

Mr. Hinslea: Now, again I say to the examiner, the only thing I can anticipate from the line of this questioning is that there is going to be a charge we failed to produce all the men, all the crew that were on the boat. If that is true I will just have to ask to catch the Cornell and produce

these men, if that is going to be the charge. I don't see why it would go into the credibility, it isn't a matter of credibility, it is a matter of failing to produce everybody on the ship?

Trial Examiner Leff: What do you want me to do now, make a ruling of some kind?

Mr. Hinslea: No, I want to know from government counsel if that is the reason for this line of inquiry.

Mr. Belkin: I don't see it is necessary to give any reason.

Trial Examiner Leff: I can't require him to state what inference you ask me to draw.

Mr. Hinslea: I move that it be stricken.

Trial Examiner Leff: On what ground?

Mr. Hinslea: Immaterial, incompetent, irrelevant, has nothing to do with the credibility. He is laying a foundation and the only foundation he can lay is failure to produce every man on the ship and every man on the Pittsburgh Steamship Company. There are forty ships that have crews that might have to be produced if we have to produce every last man that was on the ship when some conversation took place.

Trial Examiner Leff: The motion is denied. No implication is to be drawn from the ruling as to whether or not I consider it necessary for the respondent to produce any more witnesses.

Mr. Hinslea: It merely complicates the taking of this testimony.

Q. (By Mr. Belkin): Now, Mr. Barber, when you joined the—strike that. Now, Mr. Barber, you have testified that you discussed this hearing with Mr. Hinslea in the captain's quarters. Did you discuss it with anyone else before you talked it over with Mr. Hinslea? A. I did not.

Q. You never discussed it with Mr. Heckel? A. Never have.

Q. The first intimation was when you were to be witness in this hearing when you came to the captain's quarters. A. First time was when I came to the captain's quarters.

Mr. Hinslea: I object to the testimony. If it is too late, I move it be stricken. This is the third time he has gone over the same ground.

Trial Examiner Leff: It has been covered, Mr. Belkin. Because it is repetitious I will sustain the objection.

Mr. Belkin: That is all.

Trial Examiner Leff: Anything further?

Mr. Hinslea: No further questions.

Trial Examiner Leff: I have a question. Is it your testimony that you heard no talk about the union this year?

The Witness: The only talk I heard was, what was mentioned by the captain at the meeting had on the safety and general running of the ship.

Trial Examiner Leff: Did you know Mr. Vogt?

The Witness: I knew him, yes.

Trial Examiner Leff: Did you know he was a member of the union?

The Witness: Not until after he got off.

Trial Examiner Leff: After he got off the ship was that the first time you knew he was a member of the union?

The Witness: I heard the union mentioned but didn't know he was a union man.

Trial Examiner Leff: Didn't you know Mr. Vogt was a member of the union at the time the shipping season began?

The Witness: I did not.

Trial Examiner Leff: You were present at the meeting called by the captain, were you not?

The Witness: I was.

Trial Examiner Leff: Didn't the captain refer to the fact that Vogt was a union man?

The Witness: He did at the meeting, yes.

Trial Examiner Leff: Then you knew about it at that time?

The Witness: I knew it but it slipped my mind he being a union man, but as far as anything else being mentioned about it, there was none that I knew of.

Trial Examiner Leff: Did Mr. Vogt ever discuss the union with you?

The Witness: He did not.

Trial Examiner Leff: He never mentioned the union?

The Witness: He did not.

Trial Examiner Leff: Did you know whether there was an N.M.U. organizer aboard the ship in 1945?

The Witness: I did not.

Trial Examiner Leff: After Mr. Vogt had left the ship, did you learn he had been the union organizer?

The Witness: I heard something to that effect.

Trial Examiner Leff: From whom?

The Witness: I couldn't say.

Trial Examiner Leff: You never heard of it before?

The Witness: No.

Trial Examiner Leff: Do you recall who told you?

The Witness: I do not.

Trial Examiner Leff: Do you recall whether it was a member of the licensed or the unlicensed personnel?

The Witness: I think it was the unlicensed.

Trial Examiner Leff: But you don't remember who?

The Witness: No.

Trial Examiner Leff: Any further questions?

Q. (By Mr. Belkin): When you came on board the Cornell, did you tell anyone you were a member of the N.M.U.? A. I did not.

Q. After having Mr. Vogt pointed out by the captain at the meeting as a good union man, did you tell Vogt? A. I did not.

Q. Why didn't you? A. There was nothing mentioned about the union, there was no union on the boat. I gave up the union dues, I was a month behind at that time.

Trial Examiner Leff: When did you come into the hearing room today?

The Witness: This morning?

Trial Examiner Leff: Yes, what time?

The Witness: Oh, it must have been right around close to 12.

Trial Examiner Leff: Were you here while all the other witnesses testified in this evening's session?

The Witness: I was.

Trial Examiner Leff: Any further questions?

Mr. Belkin: No.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: Off the record.

(Discussion off the record.)

Trial Examiner Leff: On the record. The hearing is adjourned to 8 o'clock tomorrow night, September 4th, at the Hotel Duluth, Room 700.

(Whereupon at 7:50 a.m., September 3, 1945, the hearing was adjourned to 8 p.m. September 4, 1945.)

Hotel Duluth
Duluth, Minnesota
Wednesday, September 5, 1945

The above entitled matter came on for hearing, pursuant to adjournment, at 4:00 a.m.

BEFORE: ARTHUR LEFF, Trial Examiner.

APPEARANCES:

LOUIS S. BELKIN, Attorney, National Labor Relations Board, Eighth Region, Cleveland, Ohio, appearing for the National Labor Relations Board.

LUCIAN Y. RAY, Attorney, 1970 Union Commerce Building, Cleveland, Ohio, appearing for the Pittsburgh Steamship Company.

ROBERT HAWKS, Union Agent, appearing for the National Maritime Union.

Trial Examiner Leff: The hearing is in order.

Mr. Belkin: If the examiner please, may the record show that Mr. Robert Hawks is appearing for the National Maritime Union.

Trial Examiner Leff: The record will so show. Let the record also show that this session which was originally scheduled for 8 p.m. yesterday was adjourned to 4 a.m. today at the request of the respondent.

HERBERT TODD, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?

The Witness: Herbert Todd.

Trial Examiner Leff: And your address, please?

The Witness: 4158 Mayfield Drive, Toledo 12, Ohio.

DIRECT EXAMINATION.

Q. (By Mr. Ray): Mr. Todd, what do you do? A. I am second mate right now.

Q. On what vessel? A. The Elva C. Dinkey.

Q. And the Elva C. Dinkey is owned by what company? A. The Pittsburgh Steamship Company.

Q. During the navigation season of 1944, were you an officer on a Pittsburgh Steamship Company vessel? A. I was.

Q. What vessel? A. Samuel F. B. Morse.

Q. And what was your rating? A. First mate.

Q. What licenses do you hold? A. Master's license, unlimited.

Q. How long have you held that license? A. Two years.

Q. How long have you sailed? A. Twenty years.

Trial Examiner Leff: Will you talk up a bit, please, so I can hear you.

Q. (By Mr. Ray): While you were on the Norse, Mr. Todd, were you acquainted with a seaman by the name of Arno Weissflog? A. Yes.

Q. What rating did Weissflog have? A. A.B.

Q. A.B., but what particular duties? A. Watchman.

Q. Mr. Todd, Weissflog has testified that while the Morse was in the harbor at Conneaut that he had gone ashore to get some union literature in conjunction with some other men and that the vessel had finished unloading and had moved over to the fuel dock and that you were standing by the ladder when he and the other men returned; that the men came up the ladder, and that you waited until he got on deck and that the other men went to their quarters and that you singled him out and bawled him out for holding up the vessel and that you didn't talk to the other men about the incident. Now I will ask you whether or not the testimony given by Mr. Weissflog in connection with that incident is or is not true? A. It is not true.

Q. Referring to that incident, Mr. Todd, will you tell us, first of all, whether or not any instructions had been given Weissflog as to when the vessel would be unloaded? A. Yes, he had been given instructions as to when the vessel would be unloaded. He was told to be back a half hour before that time.

Q. Now, state whether or not any pass was issued to Weissflog? A. He was issued a pass.

Q. State whether or not the time that he should return was specified on that pass. A. No, it was not.

Q. What is the custom with respect to naming or not naming the time at which a man must return to the vessel on a pass? A. When he is given a pass he is told when to report back aboard.

Q. And nothing appears on the pass? A. No.

Q. Will you kindly tell us exactly what transpired in connection with that incident? A. We unloaded and we went to the coal dock, took the fuel, and these men weren't back, so I was standing aft there, ready to go, had the ladder on the dock, and these men came back. There was several of them—

Q. How many, do you recall? A. It was the aft end men, the wheelsman, and Weissflog; so they came up the ladder and when they came up I told them they were holding up the ship, we had held it up for half an hour waiting for them; also, that they were late for their watch. Both these men were on watch, or should have been.

Q. What do you mean? A. This wheelsman and Weissflog, and they had made no arrangements with their partners to stand their watch, that is all, that was no way to act, they were told what time the ship would be unloaded and they should be back.

Q. What did Weissflog say to you? A. He said why didn't I say something to the other men.

Q. What was your answer? A. They were the engineer's men, not under my supervision, the engineer would take care of that feature of it.

Q. What did you say to Weissflog when he said why didn't you say something to the other men? A. That is what I said, that they were the engineer's crew.

Q. You made that statement to him? A. Yes.

Q. Now, Mr. Todd, did you at any time while Weissflog was on the vessel have any union conversations with him? A. No.

Q. Do you have any knowledge as to any alleged union conversations between Captain Gerlach, Chief Haller, or Second Mate Zyp, and Weissflog? A. Oh, it is strictly hearsay is all, just what I heard from them.

Q. You have no personal knowledge of any conversation? A. No.

Mr. Ray: You may cross examine.

CROSS EXAMINATION.

Q. (By Mr. Belkin): Mr. Todd, I wonder if you wouldn't give us some idea of the way the harbor of Conneaut lies, give us a description of that. A. The dock is almost north and south.

Q. Which dock? A. The ore dock. There are two docks, the coal dock is a continuation of the ore dock, the winding basin is in between it, where ships turn around to go.

Q. So, in other words, the ore dock and the coal dock form a kind of "U." A. The ore dock ends as far as tying up ships is concerned, because the winding basin comes in there.

Q. Then it is the procedure to move a ship into the ore dock when it arrives in Conneaut, and there to unload and move it into the winding basin into the coal dock and there pick up coal? A. That is right.

Q. And that is what you were doing at the time of the incident in Conneaut? A. Yes.

Q. How far from the ore dock is the coal dock? A. Fifteen hundred feet.

Q. And when the ship is anchored or moored to the coal dock, do you or do you not have a clear view of what goes on on the ore dock? A. No, you don't.

Q. And it is your testimony that when the ship is at the coal dock someone standing on the ship cannot see the ore dock? A. You can see it.

Q. You can see what is on the dock, can't you? A. That is right.

Q. Now, when your ship was at the coal dock, did you at any time see any men on the ore dock? A. Crew members?

Q. Yes. A. No.

Q. Did you look? A. Yes.

Q. It is your sworn testimony then that when your ship was at the ore dock—I mean at the coal dock, that you looked over at the ore dock and saw no members of the crew? A. Yes.

Q. And you say the ore dock is a continuation of the coal dock, is that right? A. Well, it is hard to explain there, because if you know what a winding basin is, it is very understandable, but if you have never seen a winding basin, there is a drawback.

Q. What is a drawback? A. The dock is straight to a certain extent—the ore dock, along the first of the dock where the ships are unloaded, it is straight, then it begins to curve to the left into the winding basin, then into the slip where the coal dock is.

Q. It is true, is it not, Mr. Mate, that at the time when you were about to lift the ladder, you say, at the coal dock, these men suddenly came aboard, is that right? A. That is right.

Q. So that they had covered the distance from the ore dock to the coal dock before you lifted the ladder? A. No, they never went to the ore dock.

Q. You mean they came straight to the coal dock? A. That is right.

Q. How did you know that? A. That is the procedure anyone does in order to go to the ore dock because when you come down to the dock you can see the ship is at the coal dock.

Q. For all you know these men might have gone to the ore dock where the ship originally lay, then proceeded to the coal dock? A. No, they definitely did not.

Q. How did you know? A. Because I was on the stern of the ship when the ship was winding and I could see everything that went on.

Q. Was it not your testimony a minute ago, Mr. Mate, that you could not see, because there was a winding basin, what went on at the ore dock? A. Do you mean to recognize someone?

Q. You said that you could not see what occurred on the ore dock. Is that true or isn't it, Mr. Todd?

Mr. Ray: I think Mr. Belkin should state under what conditions and where the vessel was.

Mr. Belkin: I am just rephrasing the witness' own statement.

Trial Examiner Leff: The question is not objectionable.

The Witness: Well, I will say no.

Q (By Mr. Belkin): That it wasn't? A. From the coal dock you actually couldn't see. You can see the ore dock, yes. You can see the ships laying there unloading.

Q. But you can't see people? A. Yes, people, too.

Q. So that your previous statement that when you stood on the stern of the ship and saw everything that went on at the ore dock was not true? A. That is true. That is while I am winding—as the ship winds.

Q. By wind, you mean turn? A. Yes.

Q. Then you can see everything? A. When you go around.

Q. When you are anchored at the coal dock, you can't see the ore dock? A. That is right. Oh, you can see it.

Q. Can you or can't you? A. Yes, you can.

Q. Then you really can see the ore dock at all times? A. Yes.

Q. You can see it when you are anchored and when you are winding? A. Yes.

Q. And your previous statement that you could not see what went on at the ore dock while anchored at the coal dock is not true? A. You are not anchored at the coal dock.

Q. You are tied there? That statement is untrue? A. Well, you—

Q. Just answer my question, yes or no, then you can explain. You are not answering the question.

Mr. Ray: Let him take his time.

Mr. Belkin: Of course, he can take all the time he wants.

Mr. Ray: Certainly he can take all the time he wants.

The Witness: Will you repeat the question?

Q. (By Mr. Belkin): Yes, I will reframe it. You have made two contradictory statements. One, that you could not see the ore dock while the ship was tied up at the coal dock; the other, that you could. Now, which statement is true? A. Now, you can see the ore dock from the coal dock.

Q. That is true, you can see the ore dock from the coal dock. All right. The other statement is untrue, is that right? A Well, it must be because you can see the ore dock from the coal dock, that is a cinch.

Q. Now, while your ship was on the coal dock, did you at any time see these men come over from the ore dock to the ship? A. No.

Q. Did you look for them? A. I was looking on the dock.

Q. And you did not see them? A. Not coming from the ore dock to the ship.

Q. Where did you see them coming from? A. They landed on the coal dock side.

Q. How long does it take to get from the coal dock side to the ship? A. Oh, a matter of five minutes.

Q. A matter of five minutes. In order to return at the coal dock side, they had to come across at the harbor? A. They come across on the ferry.

Q. You saw them come across on the ferry? A. I was then loading the coal.

Q. You were then loading the coal, but you didn't see them land at the coal dock? A. They were in the ferry, landing at the coal dock.

Q. You saw them in the ferry, landing at the coal dock, and that was at least five minutes before they appeared at the ship? A. Yes.

Q. Have you ever ridden that ferry? A. Yes.

Q. How long does it take to cross the harbor? A. Not very long.

Q. Well, how long? A. A couple of minutes.

Q. You have testified that you were standing at the side of the ship, ready to pull up the ladder, when these men appeared, is that correct? A. Yes.

Q. You were surprised by their sudden appearance, were you? A. Surprised?

Q. Yes. A. No.

Q. In other words, you knew they were coming when you were ready to pull up the ladder? A. When I saw them come at the coal dock, I knew they would be there very shortly.

Q. Was the sailing of the ship delayed in any way by the arrival of these men? A. Yes.

Q. How much time? A. Half an hour.

Q. To your knowledge, did the chief engineer ever reprimand any of the aft end crew? A. I don't know.

Q. Did you make it a point to find out whether or not they were reprimanded? A. No.

Q. Did you report to the captain that these aft end men had been late? A. No.

Q. Why didn't you, Mr. Mate? A. You can see from one end of the ship to the other. The captain was standing on the bridge.

Q. The captain, in other words, saw that the aft end crew were late? A. Yes.

Q. Did the captain, to your knowledge, at any time reprimand these aft end men for being late? A. No.

Q. To your knowledge, did the captain ever check with the chief engineer to see whether these men were reprimanded for being late? A. I don't know.

Q. If the captain had done so, you would have been aware of it? A. Not necessarily.

Q. You were executive officer of the Morse at that time? A. Yes.

Q. You were informed as to whether men were punished or not, were you not? A. Not always.

Q. You mean there are some times when men are punished aboard the Morse when you were not informed? A. Punished?

Q. In any way, such as being reprimanded?

Trial Examiner Leff: He means disciplined.

The Witness: Say the question again.

Q. (By Mr. Belkin): Was there any time when the men were disciplined upon the Morse when you were not informed about it? A. Yes.

Q. Did you hear about it later? A. Sometimes.

Q. Through hearsay? A. That is right.

Q. Did you at any time, through hearsay, hear that any of these aft end crew were reprimanded? A. Not that I recall.

Q. Who was the wheelsman aboard the ship that came late with Weissflog? A. Lawrence Callahan.

Q. The captain spoke to Weissflog about this incident, did he not? A. Not that I know of.

Q. Didn't you report this to the captain? A. No.

Q. Mr. Weissflog has testified that he was reprimanded by the captain who discussed this incident with him. Is it your testimony now that you have no knowledge of this discussion with the captain? A. I did not tell the captain.

Q. Then you knew the captain did talk to Weissflog about it? A. No.

Q. You never heard about it before? A. No.

Q. Up to the moment I put this question to you, you have never heard of such an incident, is that true? A. That the captain talked to Weissflog?

Q. Yes. A. That is right.

Q. Now, do you know whether the captain talked to Lawrence Callahan about this incident? A. No, I don't know.

Q. You are absolutely certain, Mr. Mate, that there were only a wheelsman—Callahan—Weissflog, and four members of the aft crew that came up that ladder late? A. Yes.

Q. Do you deny there could be any more? A. Yes.

Q. How did you learn it was these six men so clearly and definitely? And these six men only? A. Two were my own men and four were aft end crew.

Q. Why did you recall it was four and not five? A. Because I know the men.

Q. Who were they? A. Two firemen, a coalpasser and an oiler.

Trial Examiner Leff: That is in addition to the wheelsman and Weissflog. So there were five altogether?

The Witness: Six.

Trial Examiner Leff: Six.

Q. (By Mr. Belkin): You say you know these men but don't recall their names, is that your testimony? A. Yes.

Q. Now, you said in your direct examination, Mr. Mate, that the testimony of Weissflog concerning this incident was not true, did you not? A. Yes.

Q. How do you know what he testified to? A. He read it off to me, didn't he?

Q. Who read it off to you? A. Mr. Ray. Off that sheet.

Q. Is that the first time it has been read to you? A. No.

Q. When was it read to you before? A. Tonight.

Q. By whom? A. Mr. Ray.

Q. Prior to this hearing? A. Yes.

Q. Did Mr. Ray read the testimony of some people, including Weissflog, that there were more than six men who came up the ladder late, to you? A. Yes.

Q. Now, you say these men were given passes. Did you pick them up when they returned? A. No, they were handed in at the gate when they returned.

Q. Why is it that you put no time on the passes? A. It has never been the custom.

Q. Is the time of loading and unloading at the coal and ore dock always the same? A. No.

Q. How long does it normally take? A. What do you mean, normally take?

Q. What is the normal customary time consumed by unloading ore at the ore dock and loading coal at the coal dock in Conneaut? A. Three and a half hours.

Q. Have you ever done it any faster? A. Yes.

Q. How much faster? A. Forty-five minutes faster.

Q. So that your fastest time has been roughly two hours and forty-five minutes. What has been your slowest time? A. It takes about two hours and a half to unload the ship, and it would take thirty-five minutes to get to the coal dock, and it would take about twenty minutes for fueling.

Q. That would be three and a half hours? A. Yes.

Q. So your average time that you testified before is also the slowest time.

Trial Examiner Leff: You haven't finished. After taking the fuel, do you have to load the coal?

The Witness: That is it.

Trial Examiner Leff: How long a time did you say it takes to load coal?

The Witness: Twenty minutes.

Trial Examiner Leff: Is it faster to load coal?

The Witness: You are just taking fuel for the trip.

Trial Examiner Leff: You are not loading the hatches?

The Witness: No.

Q. (By Mr. Belkin): It is your testimony that three and a half hours is the slowest time. A. If there is nothing ahead.

Q. If there is something ahead, what has been your slowest time? A. That depends on how many ships are ahead.

Q. Depending on how many ships are ahead, what has been the slowest time? A. There is no way of telling that.

Q. Has it taken as much as five hours? A. If one steamer is ahead, it would take us five hours.

Q. Has it ever taken six hours? A. Yes.

Q. Has it ever taken seven? A. Well, not that I can recall.

Q. So that generally the time consumed in going through the operations previously mentioned may vary from two hours and forty-five minutes to six hours, depending on conditions, is that correct, Mr. Mate? A. Yes.

Q. When did the men leave the ship at Conneaut on this occasion? A. I don't recall. It was right after dinner.

Q. What time would that be? A. 12:30, something.

Q. When did they get back? A. They got back at four o'clock.

Q. So that they were gone three and a half hours, is that right? A. Yes.

Q. And three and a half hours is the normal time for loading and unloading at the Conneaut dock, is that correct? A. Yes.

Q. And it might have been longer if conditions had been adverse, isn't that true? A. We know the conditions before we go ashore.

Q. The conditions were not adverse at this time? A. No.

Q. There was no one ahead of you to hold you up? A. No.

Q. So it would take the normal time of three and a half hours? A. Yes.

Q. The men aboard your ship are familiar with the time it normally takes to go through these operations, are they not? A. Ordinarily.

Trial Examiner Leff: How often does that ferry come across?

The Witness: They have a siren—whenever you want it, there is a siren both ways. If he is on the other side, he comes right over and gets you.

Trial Examiner Leff: Five people came with Weissflog?

The Witness: Four.

Trial Examiner Leff: I thought you said six all together before?

The Witness: It was six all together.

Trial Examiner Leff: Weissflog and four makes five.

The Witness: Weissflog and the wheelsman.

Trial Examiner Leff: I see. How many other people had been issued passes to leave—to go to shore?

The Witness: I couldn't tell you.

Trial Examiner Leff: Do you know if any had been?

The Witness: Who they were, there was more passes issued than two, I know that. I issue passes and one of the other mates.

Trial Examiner Leff: Do you make any record when you issue passes?

The Witness: No.

Trial Examiner Leff: Do you know who the others were whom you issued the passes to besides Weissflog and the wheelsman?

The Witness: No.

Trial Examiner Leff: Do you know what time they returned?

The Witness: Weissflog?

Trial Examiner Leff: No, the others.

The Witness: They were aboard before the ship left the ore dock.

Trial Examiner Leff: How many people are there—strike that. Go ahead, Mr. Belkin.

Q. (By Mr. Belkin): Now, Mr. Mate, you testified that you are second mate now and that last year you were first mate, is that true? A. Yes.

Q. Has that been a demotion? A. Yes, just since the last month.

Q. When did you first find out that Weissflog was the union organizer aboard the ship, Mr. Mate? A. Several weeks after we sailed.

Q. When did you sail? A. The first week in April.

Q. How long thereafter, to the best of your recollection, did you make this discovery? A. I would say about three weeks.

Q. In other words, you discovered this some time in April? A. In April.

Q. How did you discover it? A. It was another—He had a partner with him.

Q. What was his partner's name? A. John —

Q. Was it Teich? A. John—no, it is an Italian name.

Q. But it was John someone else who was Weissflog's partner, is that right? A. Yes.

Q. Why did the fact that John was Weissflog's partner make you discover that Weissflog was the union organizer? A. This fellow was, too.

Q. How did you discover John was a union organizer? A. He told me.

Q. How did you discover Weissflog was a union organizer? A. He told me that too.

Q. John told you that, too? A. Yes.

Q. Did John tell anyone else aboard the ship? A. Yes.

Q. Who else did he tell? A. Practically everybody.

Q. What happened to John? A. John got off to go home. He lived on the east coast.

Q. About what time? A. The first trip after the election was held.

Q. The election was held aboard your boat in July? A. Yes.

Q. 1945?

Mr. Ray: 1944.

Q. (By Mr. Belkin): 1944. When did this incident occur in Conneaut? A. I can't recall the day.

Q. Well, to the best of your recollection? A. The middle of July, I imagine.

Q. So it occurred in the middle of July, 1944, to the best of your recollection? Is that right, Mr. Todd? A. Yes.

Q. Do you know when Weissflog left the ship in 1944, Mr. Todd? A. No.

Q. As a matter of fact, is it not true that Mr. Weissflog left the ship before the middle of July, 1944, Mr. Mate? A. I don't recall.

Q. When Weissflog came up the ladder at the time of that incident, did you grab him? A. No.

Q. Didn't you take hold of his arm? A. No.

Q. Simply spoke to him? A. Yes.

Q. Now, you say you heard about conversations between the captain, the Chief Engineer, and Zyp—Chief Engineer Haller, the captain, and Mate Zyp—concerning

the union with Weissflog, by means of hearsay. Hearsay from whom? A. Just that he was the union organizer.

Q. That is not my question. You testified in response to a question by Mr. Ray that you had heard about conversations between the captain, Haller, and Zyp, and Weissflog, respectively, by means of hearsay. Now, how did that hearsay come to you? By that, I mean from what person?

(No response.)

Q. Well, let's break it up, since you haven't answered that question. As far as the conversations between the captain and Weissflog are concerned, who told you about that? A. The captain.

Q. As far as the conversations between Chief Engineer Haller and Weissflog, who told you about those conversations? A. You included all those together.

Q. The captain told you about all those conversations? A. No, I mean the captain told me about his conversation with Weissflog.

Q. Now, about the conversation between the chief engineer and Weissflog, who told you about that? A. You added that on the question when you asked me the first time.

Q. Let me refresh your memory. Mr. Ray, counsel for the company, just a few minutes ago—

Trial Examiner Leff: It is more than a few minutes ago. Your cross examination has been very long. Go ahead.

Q. (By Mr. Belkin) As I was saying, some time this morning you were asked by Mr. Ray how you heard about the conversations between Haller, the captain, Zyp, and Weissflog—

Mr. Ray: Not how he heard.

Mr. Belkin: I don't recall how the question was framed.

Trial Examiner Leff: Mr. Ray asked you whether you had ever heard, or overheard, any conversations between Weissflog, Haller, and Zyp and the captain, and your answer was only by hearsay. Tell us what that hearsay was.

Mr. Belkin: I am asking the source of that hearsay.

Trial Examiner Leff: Tell us what the hearsay was.

The Witness: The captain.

Q. (By Mr. Belkin): In each case? A. Yes.

Q. In other words, the captain told you about the conversations between himself and Weissflog, Haller and Weissflog, and Zyp and Weissflog, is that correct? A. Yes.

Q. While you were aboard your ship, did you at any time receive the pamphlet "N.M.U. Fights Jim Crow"? A. Yes.

Q. Was this pamphlet given to you by either John—whose last name you don't recall—or the other union organizer, Weissflog? A. No.

Q. Did the men receive the pamphlet? A. Yes.

Q. Did you receive any copies of a speech by Congressman Bradley? A. Not that I know of.

Q. There weren't any aboard your ship at all? A. Not that I know of, no.

Q. This is Board's Exhibit 4. Will you please examine it and tell us whether you ever saw that aboard your ship?

Trial Examiner Leff: Show him the original.

The Witness: That is the first time that I have ever seen that.

Q. (By Mr. Belkin): In other words, you have never seen that pamphlet at any time prior to this moment? A. No.

Q. By the way, did you at any time see a copy of this letter, which is Board's Exhibit 2, aboard your vessel, the Morse, in 1944? A. Yes.

Q. Do you recall how you happened to see that, Mr. Mate? A. It was put up on the bulletin board.

Q. Who put it up there? A. I don't recall who put it up now.

Q. Did you at any time during 1944 see a copy of this letter, which is Board's Exhibit 3? A. I don't recall seeing that.

Mr. Ray: What was your answer, Mr. Todd?

The Witness: I don't recall seeing that.

Q. (By Mr. Belkin) Do you keep a file of the letters from the president of the company aboard your ship? A. I believe they do.

Q. Is that file kept by you? A. No.

Q. Who keeps it? A. The captain.

Q. Are you allowed to examine that file? A. No.

Q. Is it the custom of the captain to show you letters from the president of the company? A. No.

Q. You will note that this letter is to all the unlicensed employes, is it not? A. Yes.

Q. And so was that letter which you saw aboard the ship? A. Yes.

Q. You saw the first one posted but you don't recall seeing the second one? A. Not that I recall.

Q. Would you deny that it came aboard your ship? A. No, I wouldn't say one way or the other.

Q. Mr. Mate, were you told by Mr. Ray, in the course of the testimony of Arno Weissflog, anything at all about the remarks that he said you made to him at the time he came aboard the ship up the ladder? A. What is that again?

Q. Let me rephrase that. Did Mr. Ray at any time tell you about the testimony of Mr. Weissflog in regard to your remarks to him as he came aboard the ship at Conneaut? A. Yes.

Q. Do you recall what he told you Weissflog had testified to? A. Yes. Weissflog wanted to know why I didn't say anything to the other—to the aft end men.

Q. Is that the only part of the testimony of Mr. Weissflog that Mr. Ray read to you? A. Yes.

Q. Did you say anything else to Weissflog? A. That is all—that I said before.

Q. In other words, according to your testimony, you have given us the entire conversation between Weissflog and yourself at that time? A. Yes.

Q. You simply asked him why he was late and he said why are you picking on me, in substance, is that correct? A. Yes.

Q. Did you say anything to him about his being the only one you were concerned with at the time? A. No, I talked to him and the wheelsman together. They were both late.

Q. Was there any member of the crew within hearing distance of yourself and Weissflog when you talked to him at that time? A. Not that I recall.

Q. There has been some testimony by a member of the unlicensed personnel of the crew that he was within hearing distance of both you and Mr. Weissflog at the time of

this conversation, and he testified that only you and Weissflog were talking together. Is his statement false? A. Yes.

Q. Because you were talking to the wheelsman at the same time. A. Same time.

Q. You knew, you say, since April that Weissflog was a union organizer, isn't that true? A. Yes.

Q. Did you at any time say to Weissflog, "I know you are the union organizer"? A. No.

Trial Examiner Leff: What was the wheelsman's name?

The Witness: Callahan.

Trial Examiner Leff: Is he still with the Pittsburgh lines?

The Witness: I couldn't tell you.

Q. (By Mr. Belkin): Did you at any time say to Weissflog—strike that. That is all.

RE-DIRECT EXAMINATION.

Q. (By Mr. Ray): Mr. Todd, how did you receive the pamphlet "N.M.U. Fights Jim Crow" when you were aboard the Morse? A. Through the United States mail.

Q. And how did it physically come in your possession? A. Came in envelopes addressed to the particular watches on the ship that were put in the mail box with the regular mail.

Q. Then you picked it out of the mail box? A. Yes.

Q. What is the fact as to whether or not at the time of this Conneaut incident the vessel gave a signal as she was departing from the ore dock? A. We blew our name, the company name and class, our name, the fleet signal—class and name.

Q. Is that customary on leaving the ore dock? A. No, not customary.

Q. What was the purpose of it then? A. Because the men weren't back.

Q. State whether or not the vessel signal was given prior to your departure from the coal dock? A. It was, and prior to Weissflog and the other men returning to the vessel.

Mr. Belkin: I want you to read that question.

Trial Examiner Leff: Ask me if you want it read.

Mr. Belkin: Mr. Leff.

Trial Examiner Leff: Read it.

(Question read by the reporter.)

The Witness: Yes.

Q. (By Mr. Ray): What signal was given? A. Th same signal.

Q. How long prior to the return of Weissflog and th other men to the coal dock was this signal given, approx mately? A. It was given after we had loaded and w started to take the fuel.

Q. How long prior to their return to the vessel? A. would say fifteen or twenty minutes.

RE-CROSS EXAMINATION.

Q. (By Mr. Belkin): Is it your testimony then, Mr Mate, that you signaled prior to leaving the coal dock an before these men came aboard the ship? A. Yes.

Q. Well, did you leave the coal dock before they cam aboard the ship? A. No.

Q. Isn't that your testimony? A. Well, we were lay ing at the dock. He said did we blow the signal before w left the dock. I said yes.

Q. In other words, you were still at the dock and ha not left it when you blew the other signal? A. No.

Trial Examiner Leff: What did the captain tell yo about his conversation with Weissflog on union matters

The Witness: It wasn't a conversation on union mat ters. He told me that he found Weissflog in the firemen' room on watch and he told him to get out, so he got out.

Trial Examiner Leff: Is it usual for the captain t report to you every time he has a conversation with a crew member?

The Witness: Not always, no, but mostly always— sometimes, the mate especially.

Trial Examiner Leff: What was so significant abou this conversation between the captain and Weissflog? Di the captain indicate to you why he considered it of sufficien importance to advise you of it?

The Witness: That man being there when he shoul have been some place else working.

Trial Examiner Leff: Did he tell you what Weissflog was doing when he was in the engineer's quarters?

Mr. Ray: Not engineer's.

Trial Examiner Leff: The firemen's quarters.

The Witness: Yes.

Trial Examiner Leff: What did he tell you?

The Witness: He said he was in organizing these men when he should have been working.

Trial Examiner Leff: What were you told about Weissflog's conversations with Zyp?

The Witness: I don't exactly recall right now. I know there was something said.

Trial Examiner Leff: That also touched on the union, did it not?

The Witness: I don't remember now.

Trial Examiner Leff: Well, you testified in response to Mr. Ray's question that you did have some hearsay information on it.

The Witness: What I mean, I don't remember exactly what about the union. It was, yes, about the union.

Trial Examiner Leff: You can't recall what it was?

The Witness: Yes.

Trial Examiner Leff: How about Weissflog's conversation with Mr. Haller? What were you told about that?

The Witness: Just that he had talked to him.

Trial Examiner Leff: About what?

The Witness: About the union.

Trial Examiner Leff: What was Haller's position again?

The Witness: Chief Engineer.

Trial Examiner Leff: Haller had talked to Weissflog?

The Witness: No, Weissflog had talked to Haller.

Trial Examiner Leff: Do you recall anything about that conversation?

The Witness: No, I don't.

Trial Examiner Leff: It was common knowledge aboard the ship that Weissflog was a member of the union, was it not?

The Witness: Yes.

Trial Examiner Leff: All you officers knew it?

The Witness: Yes.

Trial Examiner Leff: Did they ever discuss it?

The Witness: Not that I know of.

Trial Examiner Leff: How did you know they knew it?

The Witness: They must have known it. It was common knowledge. The ship is a small space and we are thrown together.

Trial Examiner Leff: News of that kind carries fast?

The Witness: News of any kind, not necessarily that kind.

Trial Examiner Leff: Any further questions?

Q. (By Mr. Ray): I have one question. Do you have any knowledge, Mr. Todd, as to whether Captain Gerlach gave any instructions to Weissflog with respect to union organizing, as to when he should do it or when he shouldn't do it? A. Yes, he told him he could do it off watch but not on watch.

Trial Examiner Leff: When did he tell him that?

The Witness: This time when he caught him in the firemen's room.

Trial Examiner Leff: You weren't there?

The Witness: No.

Trial Examiner Leff: So you have no personal knowledge of that?

The Witness: No.

Trial Examiner Leff: Any further questions?

Mr. Ray: No further questions.

Mr. Belkin: I have one.

Q. (By Mr. Belkin): During 1945—during the 1945 season aboard the Dinkey, did you at any time have occasion —strike that. During the 1945 season aboard the Dinkey, did you have any men come late? A. No, I haven't been there the whole 1945 season.

Q. On another ship? You were on another ship? A. You mean since I have been there?

Q. Yes. A. No.

Q. The rest of the 1945 season you were aboard the Morse? A. No, I was mate on the Perkins.

Q. During that time have any men reported late? A. No. Men got left.

Q. Have there been any men who weren't left, but came aboard late? A. No.

Q. During the 1944 season, at any time except the incident at Conneaut, did you have any men come late? A. Not that I recall.

Q. If there were incidents like that you would recall them? A. Yes.

Q. To your recollection, no one else ever came late except these men that came late at Conneaut? A. Yes.

Q. You say you were aboard the Perkins? A. The George W. Perkins.

Q. And the Elva C. Dinkey? A. Elva C. Dinkey.

Q. Who is the union organizer aboard the Dinkey?

Mr. Ray: Mr. Trial Examiner, may I reserve the same objection to this testimony as was reserved to the testimony of the witnesses in the prior hearing. I object to it on the same grounds that were advanced on the same type of testimony in the prior hearing.

Trial Examiner Leff: Tell me what those grounds are. I don't know what they are.

Mr. Ray: The grounds are that there is no allegation in the complaint, no testimony in the record, covering charges that involve anyone on the Dinkey or any activities during the 1945 season on the Dinkey, and if counsel for the Board intends to go into those matters, the witness should be his witness for that purpose.

Trial Examiner Leff: Objection overruled.

Q. (By Mr. Belkin): Will you answer the question? It was, who is the union organizer aboard the Dinkey? A. I don't know.

Q. Do you recall who the union organizer aboard the Perkins was? A. No.

Q. But you do recall that John somebody was the union organizer aboard the Morse? A. I will try and think of that fellow's name. John—

Q. You don't need to bother about remembering that fellow's name, because it isn't too important. Now, Mr. Mate, have you at any time discussed rotary shipping with any of the men aboard the Dinkey? A. No.

Q. Did you ever discuss it with the third mate? A. No.

Q. With the captain? A. No.

Q. That question hasn't come up? A. No.

Q. Has the question of bonus given by the Pittsburgh Steamship Company to its personnel come up aboard the Dinkey? A. Yes.

Q. Have you discussed that with the captain or other officers? A. No. Never discussed it, just heard it.

Q. Who discussed the question of bonus? A. The crew.

Q. Do you recall what, if anything, has been said by the crew about the bonus? A. No.

Q. Just their discussing it? A. That they were glad they were going to get it.

Q. Has anybody aboard the Dinkey ever discussed the question of negroes serving as seamen aboard the Great Lakes—strike Great Lakes—aboard the steamship line? A. On that Jim Crow—you mean on the Dinkey?

Q. Yes. A. No.

Q. On the Perkins? A. No.

Q. But it was discussed on the Morse? A. Yes.

Q. Did you take part in any discussions on the Morse concerning that issue? A. No.

Q. Did the chief engineer ever discuss that issue? A. Not that I know of.

Q. Did Mr. Zyp ever discuss that issue? A. Not that I know of.

Mr. Belkin: That is all.

Mr. Ray: No further questions.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: We will take a five minute recess.

(A short recess was taken.)

Trial Examiner Leff: The hearing is in order.

Mr. Ray: Mr. Zyp, take the stand, please.

ACE C. ZYP, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: What is your full name?

The Witness: Ace C. Zyp.

Trial Examiner Leff: What is your address?

The Witness: 443½ Sunset Boulevard, Toledo 12, Ohio.

DIRECT EXAMINATION.

Q. (By Mr. Ray): Now, speak up, Mr. Zyp, when you answer the questions. What is your occupation? A. Second mate, steamer Morse.

Q. What was your occupation in 1944? A. Second mate on the steamer Morse.

Q. And you are still second mate on the steamer Morse? A. Again. I have been on a couple of other boats.

Q. While you were acting as second mate on the steamer Morse, were you acquainted with a seaman by the name of Arno Weissflog? A. Yes, I was.

Q. Before we go into any questions relating to Weissflog, will you tell me how long you have sailed, Mr. Zyp? A. Eighteen—seventeen years in all.

Q. What licenses do you hold? A. First class pilot.

Q. How long have you had that? A. I got it in 1938—seven years.

Q. Now, referring again to Mr. Weissflog, was he or was he not on your watch on that vessel? A. He was for the biggest part of the time.

Q. How much of the time that he was on the vessel was he on your watch? A. Well, we ship in April, May, June, July—four months.

Q. Do you recall when Mr. Weissflog left the Morse? A. Yes.

Q. Can you tell me when that was, approximately? A. Approximately the beginning of August—thereabouts—possibly the very latter part of July, but I think it was a week in August.

Q. What portion of the time from April to the latter part of July was he on your watch? A. Changed over the first part of July.

Q. First part of July. Mr. Zyp, Mr. Weissflog has testified in a hearing prior to this time that he had a conversation with you in the wheelhouse in the presence of a wheelsman, in which you asked him about the union, and that this led him to a discussion about the Jim Crow pamphlet; that during that conversation you said that you would not sail with a negro and that when Weissflog told you that you ought to be able to fix it up because your brother was the personnel manager that you blew up and called him all kinds of names, including communist organ-

izer and agitator, no good communist bastard salt water stiff, and that he was trying to bring salt water men up here. Now, I will ask you first of all, if you had a conversation in which the Jim Crow pamphlet was discussed?

Mr. Belkin: Just a moment, before you answer. I have made an objection to this form of question before and you overruled me. I will make it again.

Trial Examiner Leff: I don't recall you making it before. I don't see the point, Mr. Ray, in repeating the witness' entire testimony, in asking the witness to confirm or deny it, generally. Weissflog's testimony might cover ten different points and the witness might just deny one of them and that would permit him to answer no to the entire thing. It makes the answer very confusing. You read all the testimony and then he denied it generally then later on, on direct and in the course of the examination, it appeared that part was true.

Mr. Ray: I haven't asked him.

Trial Examiner Leff: What is the point in reading all?

Mr. Ray: You mean because it is repetitious?

Mr. Belkin: There is no foundation, it is certainly a most improper way to put a question. Prior to this hearing I made an objection.

Trial Examiner Leff: When a witness' attention is directed to a single incident in which the witness is involved, and the witness is asked whether it is true or not, I think it is proper.

Mr. Belkin: Even then I think a foundation should be laid.

Mr. Ray: No other foundation should be laid.

Trial Examiner Leff: That is not necessary. Why not ask him the specific thing you have in mind?

Mr. Ray: If I may speak again.

Trial Examiner Leff: Why don't you reframe the question?

Mr. Belkin: I object to your instruction to him, if he is going to base the question on instruction.

Trial Examiner Leff: No, I prefer to have an objection made after the question is asked.

Q. (By Mr. Ray): Mr. Zyp, did you at any time while Weissflog was on the vessel have a conversation with him in the presence of the wheelsman involving the negro question?

Trial Examiner Leff: Is there any objection to that?

Mr. Belkin: No objection.

Mr. Ray: I object to the trial examiner indicating that there was an objection.

The Witness: I did, yes.

Trial Examiner Leff: He indicated that he was going to object.

Q. (By Mr. Ray): Now, during that conversation with Weissflog, did you tell Weissflog that you would not sail with a negro?

Mr. Belkin: I object. This is the type of question I objected to before.

Trial Examiner Leff: Overruled.

Mr. Belkin: Please let me finish.

Trial Examiner Leff: You have said that and I ruled against you. The objection is overruled.

Mr. Ray: Read the question.

(Question read by reporter.)

The Witness: I told him that.

Q. (By Mr. Ray): During that conversation did Weissflog tell you that you ought to be able to fix it up because your brother was the personnel manager? A. Well, yes, he mentioned that.

Q. Now, following his statement, did you call him a communist organizer and agitator? A. No, I didn't call him a communist and I didn't call him—what was the other name?

Q. Communist organizer and agitator? A. He was an organizer. I didn't call him a communist. He was an agitator, he was agitating amongst the crew.

Q. Did you call him a no good communist bastard? A. No.

Q. Did you call him a salt water stiff? A. I never used that expression at all.

Q. Did you tell him he was trying to bring salt water men up here? A. No.

Trial Examiner Leff: Did you testify before that you addressed Weissflog as an agitator?

The Witness: No.

Trial Examiner Leff: At no time?

The Witness: No.

Mr. Belkin: As I recall it, his testimony was that he did say he was agitating.

Mr. Ray: I think Mr. Belkin should reserve that type of question until the cross examination.

Mr. Belkin: We are trying to clarify the record.

Trial Examiner Leff: Let me put it directly to you. What is your recollection, Mr. Ray?

Mr. Ray: My recollection is the same as the witness'.

Trial Examiner Leff: Is it your recollection that the witness added that he did call him an agitator because he was agitating?

Mr. Ray: He mentioned the word agitator and I can't recall in what connection. Let's ask him again.

Q. (By Mr. Ray): Did you call him an agitator? A. I didn't call him an agitator, but I said he was agitating amongst the crew.

Q. Now, in this discussion about negroes, just what did you say to Weissflog, Mr. Zyp? A. I just stated that I didn't want to sail with negroes, in the same room, as shipmates. We have colored people like the cook, but we don't have to live with them.

Q. What if anything did Mr. Weissflog say in regard to that? A. He said they have them on salt water.

Q. Was there anything else said, or did that end the conversation? A. He said, "they have them on salt water and if it is all right to have them there you can have them here just as well."

Q. What, if anything, did you say to that? A. I didn't say anything to that except I said, "I don't like it, I still don't want to be shipmates with a negro."

Q. Now, were you and Weissflog ever in the pilot house at any time when the captain of the vessel had any discussion with Weissflog with respect to his organizing activities on the vessel? A. Yes, once.

Q. Will you tell us what occurred on that occasion? A. What happened to start with, I had given Weissflog permission to go aft for coffee at midnight provided it was clear and we were out in the lake and there was nothing in the vicinity that would endanger the navigation of the ship, and he went back there and had a cup of coffee and maybe something to eat, to come back in fifteen minutes. So then he went away and stayed away a lot longer and

the captain had gotten up, or was up, I don't know which, and he had seen Weissflog go aft and he asked me about that, and I said "Yes, I let him go aft for coffee," and the captain went aft himself and found him in the oiler's room organizing the oilers for the N.M.U. and then the captain told him to go forward, and shortly afterwards the captain came in the pilot house and told him that he couldn't stop him from organizing while off watch, but he didn't want him to go in a room and organize in the middle of the night while on duty.

Mr. Ray: That is all.

Cross Examination.

Q. (By Mr. Belkin): Where is the oiler's room in the ship? A. Alongside the mess room on the port end side.

Q. Can you go into the oiler's room from the mess room? A. No.

Q. If you are in the mess room, how do you get to the oiler's room? A. You go out of the mess room on the deck.

Q. You have to go out of the mess room, out on deck and along into the oiler's room? A. Yes.

Q. So the captain, in checking up on Weissflog, went from the bridge to the mess room and out on deck and into the oiler's room, is that right? A. I don't know.

Q. That is the way he would have gone if he would have found Weissflog in the oiler's room? A. Not necessarily.

Q. How could you proceed? A. As you walk by the oilers' room, they have a window there, or a port hole, which is the same as a window, and you can see.

Q. So the captain could have seen Weissflog in the oilers' room by looking through this window or by going through the mess room and out on deck and into the oilers' room? A. Yes.

Q. No other way? A. No.

Q. Was it customary for the captain to check up on members of the crew who were having coffee? A. No, it wasn't customary but may I say he didn't check up, he just happened to see him. He was sometimes forced to go up at night and go to the bath room.

Q. Do you recall at any time when someone you excused for coffee or for some other reason was followed by the captain? A. No.

Q. This was the only time it occurred to anyone on your watch? A. That is right.

Q. Did the captain at any time before this time ask you about Mr. Weissflog's activities? A. (No response.)

Q. Didn't you get my question? A. Yes. No, he didn't.

Q. He never asked you before? A. No, he did not ask me.

Q. By the way, I want you to clear one thing up about the ship for me, Mr. Zyp. Is the wheelhouse or bridge on the same side of the ship as the oilers' room? A. The wheelhouse is amidship, and the oilers' quarters are in the port end side.

Q. So that if you were to traverse the ship from the wheelhouse to the oilers' quarters, you would have to cross the ship, is that right? A. No. May I explain that? The pilot house or wheelhouse is a small house amidship with a door on each side.

Q. It would be up to the extreme front end of the ship, right in the middle? A. That is right.

Q. Now, if you want to proceed from that place to the oilers' room, how do you go? A. You go out the lee door, that is the door that the wind is not blowing, or go down the steps to the oilers' room.

Q. If you want to go down to the mess room? A. The same thing, it is customary to go out the lee door.

Q. Which might be a door on either side of the ship? A. But if there is no wind to amount to anything, we used the port door because the captain's bed is on the starboard side, to avoid awakening him at night.

Q. Weissflog, as you have testified, was given permission by you to go aft? A. Yes.

Q. Did you give the other men permission to go aft, too? A. Yes.

Q. Who else was present when you talked to Weissflog up in the wheelhouse about your aversion to sailing with the negroes? A. The wheelsman.

Q. What was his name? A. Donald De Camp.

Q. Was he a member of the unlicensed personnel? A. Yes.

Q. Had you been told by Captain Gerlach at any time not to discuss any union issues with the crew? A. He didn't tell me not to discuss them.

Q. Were you familiar with the N.M.U. policy on the Jim Crow issue—I mean, the negro issue? A. Yes, I was acquainted with that.

Q. Will you tell us what your understanding of their policy is? A. Their policy, as I understand it, is that a negro is just as good as a white man. That they should be allowed to ship with the white men aboard the ship.

Q. As seamen? A. As seamen.

Q. And you are opposed to that policy as I understand it? A. I am.

Q. And your opposition is what you expressed to Weissflog and the wheelsman at that time? A. That is right.

Q. What did you mean by saying to Weissflog that he was agitating the crew? A. What he said is that they should join the N.M.U. because they would get higher wages, and the Lake Carriers Association is not giving higher wages, and the N.M.U. would.

Q. Then you felt that was agitating the crew? A. And he was always continuously working on that subject and condemning the LCA—Lake Carriers Association.

Q. How did you know he was doing this? A. I heard him talking, he had a loud tone of voice. I heard him on deck. My room is on deck with port holes, I always kept them open, and it is just like I am on deck myself.

Q. Under normal conditions, across what length of the ship did you hear the voices of the crew when they were in conversation? A. The length of the ship, which is fifty feet.

Q. I didn't mean that. Can you hear voices aboard the ship for fifty feet? A. Yes.

Q. Seventy-five feet? A. I would say, yes.

Q. Normal tones of conversation? A. Normal—fifty feet would be about the limit. I have stood on one side of the deck and talked to someone on the other side.

Q. If anyone was on the last hatch of the ship talking to someone else, he could be heard about fifty feet from that hatch? A. Yes.

Q. And, of course, if they lifted their voices somewhat they could be heard for a longer distance? A. I would say so.

Q. Did you tell the captain of the ship about your conversation with Mr. Weissflog in the wheelhouse? A. I mentioned it to him, yes.

Q. When did you tell him? A. At that same time, the same night, and, of course, the captain came in the wheelhouse.

Q. Did the captain agree? A. You mean that conversation about Jim Crow?

Q. Yes. A. No, I didn't mention that the same day, I mentioned that later on.

Q. Did the captain agree with you at some time on the Jim Crow issue? A. Yes, he didn't want to be shipmate with the negro either.

Q. Did you ever discuss the rotary shipping list with anyone? A. No, I did not.

Q. With the captain? A. I did not.

Q. Did you ever discuss it with the third mate? A. No, I never mentioned it. He didn't think about those things, I guess.

Q. Did anyone else in that conversation in the wheelhouse call Weissflog a communist? A. No.

Q. So the word communist was not mentioned by anyone? A. Not at that time.

Q. When was it mentioned? A. Not that I remember, any time.

Q. Did anyone tell you about the conversation between Chief Engineer Haller and Weissflog in the engine room concerning the union? A. Well, one time a deck watch mentioned to me that the chief was talking with Weissflog in the mess room, not in the engine room.

Q. Did he tell you what had been said? A. No.

Q. He just said he had been talking about the union? A. Yes.

Q. Didn't you ask him what was said? A. No, I did not.

Q. Do you want us to understand from your testimony that he simply said there had been a conversation in the mess room between Chief Engineer Haller and Weissflog about the union and that you asked him nothing at all about what had been said? A. No.

Q. Did he tell you what had been said? A. No, all he said was that they were talking union and I wasn't interested in the details.

Q. He said that they were talking union in the mess hall? A. Yes.

Q. By the way, did the captain tell you he found Weissflog organizing members of the N.M.U. in the oilers' room? A. Yes.

Q. What did he say about that? A. Well, he said he came up in the pilot house and he told me he said, "I just told Arno Weissflog to get out of the oilers' room, he was organizing the oilers at night."

Q. Had the captain at any time instructed Weissflog or anyone else about when they could or when they could not organize the men? A. The captain told him he could not do it while on duty.

Q. I mean prior to that time. A. Yes.

Q. Were you present when the captain said that to him? A. Not at the time. He told me he had told Arno.

Q. So to your knowledge, you don't know whether he told him or not, except from what the captain said to you? A. That is right.

Q. Did the captain at any time tell you how he ejected Weissflog from the firemen's quarters? A. No.

Q. Did you ever hear about that incident? A. I heard about it, yes.

Q. How did it come to your attention? A. Someone mentioned it.

Q. Some member of the crew? A. Yes.

Q. So it is common knowledge in the ship that the captain had ejected Weissflog from the firemen's quarters? A. Yes.

Q. Did they tell you what he said to him at the time he ejected him? A. They only told me he said to get out.

Q. They didn't tell you anything else he said? A. Not word for word.

Q. But in substance. A. All the men told me was that the captain told him to get out of the firemen's room while on duty, that he didn't have no business there.

Mr. Belkin: That is all.

Mr. Ray: No re-direct.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: We will take a five minute recess.

(A short recess was taken.)

Trial Examiner Leff: The hearing is in order.

ALBERT L. HALLER, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Leff: Please be seated and give us your full name and address.

The Witness: Albert L. Haller.

Trial Examiner Leff: And your address?

The Witness: Steamboat or home?

Trial Examiner Leff: Your home address.

The Witness: 1429 Clifton Place, Lakewood, Ohio.

DIRECT EXAMINATION.

Q. (By Mr. Ray) What is your occupation? A. Chief engineer.

Q. What vessel are you on at the present time? A. Steamer H. C. Frick, because I have just been transferred recently. Just today.

Q. Which vessel are you leaving today? A. The steamer Morse.

Q. What license do you hold? A. Chief engineer's, unlimited.

Q. How long have you had that license? A. About eighteen years.

Q. How long have you sailed? A. Twenty-eight years.

Q. What vessel were you on during the navigation season of 1944? A. The steamer Morse.

Q. As chief engineer? A. Chief engineer.

Q. While you were acting in that capacity on that vessel during that time, were you acquainted with a seaman by the name of Arno Weissflog? A. Yes.

Q. Mr. Weissflog, chief, has testified that conversations were had with you on union matters, principally in the mess room of that vessel. State whether or not that is a fact. A. No, it might have been a few times, but most

of the time it was on deck when they were playing quoits. In the mess room it might be a few occasions, to get the second or third cup of coffee and he had been in there.

Q. Did you say the second or third cup? A. The second or third cup.

Q. Mr. Weissflog has further testified that during these discussions with you that you told him that the National Maritime Union was lying to the members on the question of rotary hiring. Did you or did you not make such a statement to Weissflog? A. No, I never said they were lying, I just commented about it, didn't say they were lying.

Q. Mr. Weissflog has further testified that you stated to him during some of these discussions that he and the rest of the—that they were lying to the membership on the question of the payment of $1.25 an hour for fit-out and lay-out. Did you make such a statement to Weissflog? A. No, because—that is the first I knew there was something mentioned about $1.25 so how could I say he was lying. There was no mention about $1.25 at all.

Q. Mr. Weissflog has further testified that you said to him that the N.M.U. was slandering the legitimate seamen on the Great Lakes and that the only reason that the N.M.U. were up on the Lakes was to drive the oldtime seamen off the Lakes and put communist red stooges from the salt water in their places. A. No, because I am from salt water myself. Our conversations were about seventy-five per cent friendly in regards to him being from salt water. I never made no statement like that.

Q. During the time you and Weissflog were on the Morse—first, do you or do you not have any recollection of an incident where the captain was in the mess room or in the dining room, rather, and a waitress or some woman on the vessel came in and made a statement to the captain? A. I was sitting—

Q. Do you have any knowledge of that incident? A. I do.

Q. Will you tell us what you recall about it? A. This lady came in—

Q. Who was she? A. Second cook. "Captain," she said, "I wish you would get this man out of the galley. He is interfering with our work. He is bothering us."

Q. What, if anything, did the captain do or say? A. The captain finished his dinner and he walked out of the door and that is the last I knew about him.

Q. Did you at any time discuss the negro question with Weissflog? A. No. Only just when the pamphlet came aboard and he said—he passed some comment on that pamphlet and that is all there was to that.

Q. What, if anything, did you say in connection with the negro question to him? A. I don't recall having much to say about that. Our conversation never led much to the negro—only about that pamphlet. He said something about how it came aboard. I said the letters are distributed, it come through the mail.

Q. Now, while you were on the Morse, did you at any time see a reprint of Congressman Bradley's speech? A. No, I don't recall that.

Q. What is your answer? A. No, I don't recall seeing that.

Q. Now, there has been testimony in this case that Weissflog and a wheelsman and four members of the engineering department came aboard the vessel late at Conneaut. Do you have any knowledge as that incident. A. Very much so, because at the time I was shorthanded and I just don't know how many men, I know it was a couple or three men on shore and these fellows—we was over at the coal dock and the fellows hadn't been back yet and I was taking care of the fuel, I hadn't seen them come back. They checked up on the crew and they said some of the fellows hadn't come back yet so we waited there till they came back, and it was Weissflog and Callahan and several of our fellows, I don't recall just who they were but there was some of my men amongst them. I know two of them in particular, the others I can't recall who they were.

Q. After they returned, what if anything, did you say to these men in your crew? A. I told them we are shorthanded, I did say, "Don't you know there is a war on? We are trying to get this thing around, you fellows could have been back, you could see the boat, being shorthanded you could have come back." I went to their rooms and told them personally, I didn't jump them on the deck because I was busy.

Trial Examiner Leff: Who were they?

The Witness: I don't recall who all they were. The one oiler there.

Trial Examiner Leff: What is his name?

The Witness: Livermore. I am quite sure of Livermore, and Cook—he was a fireman. The other two I don't recall. This Livermore was an oilman.

Q. (By Mr. Ray): What, if any, knowledge do you have as to Weissflog's activities in organizing the members of the unlicensed personnel aboard the vessel? What, if anything, did you observe? A. You mean as to what he was doing about rotary hiring? Repeat that question.

Q. Did you observe his activities as to when he would do his organizing? A. Well, he was doing it all the time; twenty-four hours a day, when he wasn't sleeping.

Q. And how did these discussions that you had with Weissflog ordinarily start? A. I would be out playing quoits and he would come walking up to me and start a conversation. Sometimes he would start out with salt water then it would wind up with union activities.

Mr. Ray: That is all.

CROSS EXAMINATION.

Q. (By Mr. Belkin): Mr. Engineer, Weissflog was not under your supervision? A. No.

Q. How did you know he spent twenty-four hours a day, when he wasn't sleeping, organizing the men? A. He was back aft there when I was around, he was in the firemen's room, in the oilers' room, in the mess room, he was out on deck, wherever I would be, he would be hounding you almost.

Q. Did he try to convince you to join the N.M.U., too? A. I told him "I would join it if you take $2.50." He said, "I can't organize you, you are licensed."

Q. You knew that when you made that statement? A. I said, "You are welcome to sign up all my men as far as I am concerned."

Q. You told him if he would take $2.50 you would join? A. Yes.

Q. You knew when you said that that you were not eligible for membership? A. I don't know whether I was or not.

Trial Examiner Leff: You mean you really wanted to join the CIO?

The Witness: Sure, if he could have signed me up, I would have signed up, sure, just to show him I wasn't definitely against him.

Trial Examiner Leff: You are for the union?

The Witness: To a certain extent, sure, I am. I certainly am. I am not against the union.

Q. (By Mr. Belkin): Let's determine that extent. Are you for the rotary shipping list policy? A. Not the way he had it interpreted I am not.

Q. Are you in favor of having negro seamen and negro oilers aboard your ship? A. Well, that is according to how you would have them. Yes, if they weren't mixed with the other crew.

Q. Are you in favor of them mixing with the other crew? A. If they got along, yes. If they could get along good, I think it would be all right.

Q. You have just stated that you would be in favor of having them aboard the ship if they were not mixed. Now, do you want to change that and say you are in favor of having them aboard the ship even if they are mixed? A. If the white fellows would agree to it.

Q. Then you would have no opposition? A. No, of course not. That is the point that was brought out in the discussion with Weissflog. He just mentioned something casually about that, it was never anything definite.

Q. Are you in favor of the union's position on overtime? A. I certainly am. We pay it. Positively.

Q. Are you in favor of the union's position that a man off watch who is required to do a job be paid for it? A. Yes, sir.

Q. You are in favor of that. What else in the union policy are you in favor of? A. That is a pretty broad question. You would have to—that covers a pretty large field.

Q. Let's put it this way, narrow it down. What other union policy, in addition to the rotary shipping list, are you opposed to? A. I couldn't answer that question.

Q. Are you in favor of the National Maritime Union's policy such as entering and participating in the national elections? A. I certainly am.

Q. So, generally, the only thing you are opposed to is rotary shipping? A. Yes, I am, in the respect that Weissflog was bringing out.

Q. Otherwise you favor the N.M.U. policies? A. In general, yes.

Q. Did you convey to—strike that. As I understand it, you had some conversation with Mr. Weissflog from time to time on the question of payment for fit-out and lay-out? A. Yes.

Q. What did you say to him about that? A. Oh, he was talking about—I was playing quoits and he mentioned something about lay-up, and I said, "One thing, you have never laid up one of our boats," I said, "You don't know our setup." And he was talking about—

Q. What was he talking about that would lead to your saying, "You don't know our setup"? A. He was talking about working so many hours a week.

Q. What did he say about working so many hours a week? A. He said something about only working forty hours a week. I said, "We don't have to get boats laid up if we worked only forty hours." He mentioned about paying overtime and I said I can't see where a man should get overtime, he is getting paid for thirty days—by the month—our company pays by the month, thirty days, and of course he mentioned that they should pay overtime in order to shorten up their lay-up. That is so that they could get off the boat by Christmas. Our main object is to get the boat laid up and get home. After we put in nine months on the boat, those fellows are anxious to get home.

Q. In other words, the union policy on payment for fit-out was another thing to which you objected? A. On that lay-up.

Q. Yes. So in addition to the rotary shipping list question, you also opposed the union on this issue? A. I opposed him because I don't think he was conveying the union's policy, because I read the Pilot myself.

Q. So you felt his interpretation of the union policy was wrong? A. That it was wrong.

Q. Because yours is different, you opposed it? A. Yes, because he wasn't versed enough on knowing what our conditions were.

Q. Who was present at the time you played quoits? A. That is hard to tell. There's always half a dozen around.

Q. Unlicensed personnel? A. Mostly.

Q. That varies. but generally you have a group of men watching the game? A. They were there most generally.

Q. These discussions took place in front of these men? A. No, there was many times, quite a few times, Weissflog and I talked alone.

Q. Quite a few times you talked in front of the other men? A. Yes.

Q. Were the same things discussed in almost every conversation? A. Different conversations. As I say, it wasn't always the union that I discussed with Weissflog. He was from the coast, and he was familiar with some of the companies that I had worked for when I was a kid, during the first World War, and he had been on these boats and I was trying to find out their conditions covering one thing and other, it wasn't always the union.

Q. So when you discussed those things you got to the seventy-five per cent friendly part of your conversations? A. Yes.

Q. How about that twenty-five per cent unfriendly conversation, what was that about? A. That wasn't necessarily unfriendly. That was, for instance, now, like we had—well, there was one case there where we had two fellows—coalpassers, that decided to quit the last minute while the boat was unloaded, and so, of course, they were quitting, and we gave them the money—that is, gave them their slip to take to the mate and get their money, and Weissflog came running back to me and said, "What did you leave those men get off for?" I said that is their business, I can't help that, if they want to go, they can go. He tried to talk them into staying. I said, "I don't think you should have anything to do with it, that is their personal business." He said, "If this was union, under the CIO, we would make them fellows stay until they are properly relieved." I said, "If that is the case, you might be here for days." I said, "We can't hold the boat here waiting for somebody to relieve them, when you can't get anybody." That was our unfriendly conversation. He wouldn't approve of it. That was one of his organizing activities, things on that order.

Q. Mr. Haller, did you sail the ship shorthanded then? A. We did. We were all unloaded.

Q. And you opposed Mr. Weissflog's attempt to persuade these men to stay on the boat? A. I told him I didn't think that he should go back and interfere with their business.

Q. He was just trying to persuade these men to stay? A. He was.

Q. It would have been helpful to the ship if they had? A. It might have been, I don't think so.

Q. But you had been shorthanded all through the year 1944? A. Yes, we are shorthanded right now. Not all the time.

Q. A good deal of the time? A. Occasionally.

Q. But at least on that trip you sailed shorthanded? A. Yes.

Q. Do you want us to believe, Mr. Haller, that it would be helpful to the ship if those—that it would not have been helpful to the ship if those men had stayed aboard? A. Repeat that.

Q. Do you want us to believe as part of your sworn testimony that it is your opinion that the ship did not need those men? A. That isn't my opinion. We did need the men.

Q. And you objected to Weissflog's attempt to persuade them to stay? A. I didn't exactly object. I said I didn't think he had any business to come back there and interfere with the crew.

Q. Did you feel it was interference with the crew when these men had already signed out? A. You mean they already had their money? They just about had their money at the time.

Q. So they had their money and in that sense were no longer members of the crew. A. Everything happened so fast I couldn't tell you whether it was before or after they were paid, but we had unloaded the ship.

Q. Now, you said that you made some comment or had some discussion when the pamphlet "N.M.U. Fights Jim Crow" came aboard the ship, did you not? A. It was posted in the galley and I was standing in the galley and Weissflog came in and looked at it and he said something about it.

Q. You say he asked you how it came aboard? A. Something like that.

Q. And what did you say to him? A. I said it came in the mail as far as I know. It must have come—those letters came aboard the boat, I couldn't see what was in the envelopes but when the envelopes were distributed I seen this pamphlet hung up in the mess room and I thought he hung it there. He came in and he was pretty sore about it. I said, "It is your literature, didn't you hang it there?" He said no.

Q. So Weissflog hadn't known anything about the pamphlet, to your knowledge, before he saw it? A. He must have got a letter.

Q. But according to your knowledge? A. I wouldn't know what he got, but there was envelopes for six firemen, three oilers and three coalpassers came aboard our boat.

Q. Did you distribute the letters to the oilers and firemen? A. Yes, they come down there and we gave them their mail.

Mr. Ray: What was that?

The Witness: When the mail comes aboard they give it to the mate, the mate will distribute the forward end and the aft end.

Q. (By Mr. Belkin): So you distributed the aft end? A. I didn't, maybe. Probably the assistant did.

Q. Probably the assistant did? A. Yes.

Q. Now, one more question or two. You said the second cook came in the dining room where you were eating and said to the captain, in your presence, "I wish you would get that man out, he is interfering with our work, bothering us." Now, do you recall, Mr. Haller, whether she told the captain in what respects Weissflog was bothering her? A. I wouldn't know. I didn't know anything, only just that she mentioned to the captain about this—

Q. Captain Gerlach has testified that she said that "he was bothering us by attempting to organize us in the union." Didn't you hear her say that? A. No, I did not.

Q. But you were present at the time? A. Of course, I was sitting at one end of the table and he at the other end. Whatever he said after he left the dining room table, I don't know because I went out on deck.

Mr. Belkin: That is all.

Mr. Ray: No further questions.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: We will take a short recess.

(A short recess was taken.)

Trial Examiner Leff: The hearing is in order. Do you have any more witnesses to call in Duluth, Mr. Ray?

Mr. Ray: There is no further witness to call in Duluth, but if the trial examiner please, we move at this time for an adjournment of this hearing to December 1, 1945, at Cleveland, Ohio. In support of the motion, the respondent desires to state that there are still two licensed officer witnesses who are on the vessels in the Pittsburgh Steamship Company's fleet. These officers are on the steamer Buffington and the steamer Dickson. I have checked with the Duluth agent for the Pittsburgh Steamship Company and that agent has no advice as to when either of the vessels will return to Duluth.

Trial Examiner Leff: When were these vessels in Duluth last.

Mr. Ray: The Dickson, I believe, Mr. Trial Examiner, was here since the hearing has been in effect, but we were taking other testimony and were unable to call the witness on that vessel, or it may have been here the day the reporter was not here. The Buffington has not been here at any time since the hearing and as far as we know is in what is known as the "Stone Trade."

Trial Examiner Leff: Where is that?

Mr. Ray: The "Stone Trade" is from Calcite to lower Lake Erie and Lake Michigan ports.

Trial Examiner Leff: Now, when can you find out when the Dickson will be in Duluth. Can you find that out this morning?

Mr. Ray: I can make an attempt to find out what information can be secured. As I say, the present information I have is that the—from the Duluth port agent, is that he has no information concerning when she will return, so I would simply go to that source again and I would assume that the information would be the same as I am now giving to you. In other words, Mr. Carr has no information at this time.

Trial Examiner Leff: Why was not the witness called when the Dickson was in port?

Mr. Ray: I have just told the trial examiner that I don't recall now whether the Dickson was one of the vessels that arrived when the reporter was not here or whether she arrived when other witnesses were called and the calling of witnesses from the Dickson would have held up the vessel.

Trial Examiner Leff: The Dickson does come to Duluth once in ten days.

Mr. Ray: I can't tell you that.

Trial Examiner Leff: Do you know whether the vessels hit Duluth at ten-day intervals?

Mr. Ray: A big percentage of them do.

Trial Examiner Leff: So that if the Dickson had left Duluth prior to the evening of August 28th she should be back at Duluth within the next day or two.

Mr. Ray: That doesn't follow because she may be put in the Stone Trade. I will attempt to secure that information for you.

Trial Examiner Leff: Please find out the date when the Dickson was here last, too.

Mr. Ray: I will attempt to find that out also. Now, there are four or five licensed officer witnesses and nine or ten unlicensed men that we have been unable to contact because of the shortness of time in which to contact them, but we do know that these men are no longer employed by the Pittsburgh Steamship Company and are sailing on vessels owned by other steamship companies. In addition to the witnesses I have already referred to, there are other witnesses which the respondent intends to call from its Cleveland office. Now, after the Board's testimony was produced, it became known to us for the first time that fifty-eight witnesses were involved and our investigation revealed that these witnesses were scattered on thirty-eight vessels of the respondent's fleet, plus these additional that I have told you about that are not owned and operated by the respondent. Now, at the close of the prior hearing, the trial examiner will recall that a postponement was given to August 28th and the parties were requested by the trial examiner to attempt to agree on a place where the hearing might go ahead. Prior to August 17th Mr. Hinslea came to Duluth and spent ten days, working day and night, and prior to August 17th I spent a week in Cleveland after returning from my vacation, and with both of us working

during that time, Mr. Hinslea was able to contact twelve vessels and I was able to contact five vessels, so it is apparent that we haven't had a chance because of the shortness of time in which to complete our investigation.

Trial Examiner Leff: Isn't it true that almost all your vessels come to Duluth in the course of ten days?

Mr. Ray: No, it is not; if you want to hold me down to percentages, I will have to secure that information definitely from the—

Trial Examiner Leff: Anyway, it is unimportant because you say you did get hold of all the witnesses except the ones on the Buffington and the Dickson.

Mr. Ray: The others are on—the other officers are on other vessels.

Trial Examiner Leff: Not owned by the Pittsburgh Steamship line?

Mr. Ray: Not owned by the Pittsburgh Steamship line, and the unlicensed men are on vessels not owned by the Pittsburgh Steamship line. Now, on either August 16th or August 17th, Mr. Belkin and Mr. Hinslea and I conferred on the question of the forthcoming hearing in Duluth and on the question as to whether the respondent's case could be finished at that time and Mr. Belkin was told of the practical problems that confronted us and he was told also that we felt that because of these practical problems the logical time to hold the hearing, including the one which had been set for the 28th of August, was after the close of the navigation season, but that rather than be subjected to any charge by either the Board or the charging union that we were attempting to delay the case, we stated that we would come to Duluth and would attempt to get all the witnesses that could be secured upon the Pittsburgh vessels coming into the port of Duluth, and I believe the trial examiner will agree that we have attempted to fulfil that promise.

Trial Examiner Leff: Now I want to ask you this. If, as I had originally intended, I were to adjourn the hearing from here to Cleveland with a lapse of not more than a few days, I take it you would be able to get all your shore witnesses.

Mr. Ray: Yes.

Trial Examiner Leff: The only witnesses you would be unable to get is this licensed officer on the Dickson, who,

as I understand, has been in Duluth and probably will be in Duluth within a short time?

Mr. Ray: Your last information is not based on the information I have.

Trial Examiner Leff: What is your information?

Mr. Ray: That we have no information.

Trial Examiner Leff: You will secure that for me?

Mr. Ray: I will attempt to.

Trial Examiner Leff: That leaves one witness, a licensed officer witness, on the Buffington. That witness should be available on some port near Cleveland?

Mr. Ray: That depends entirely on where the Buffington is. If she goes to Lake Michigan, she would be available—

Trial Examiner Leff: I am on the assumption that she continues the present trade.

Mr. Ray: That again depends on whether she is assigned to lower Lake Erie or lower Lake Michigan.

Trial Examiner Leff: You can find out what her schedule is for next week.

Mr. Ray: I can find out what trade she is in.

Trial Examiner Leff: And what port she will hit within the next week or so.

Mr. Ray: There are four or five licensed officers on other vessels.

Trial Examiner Leff: Is their testimony necessary to this proceeding?

Mr. Ray: It is.

Trial Examiner Leff: Can you indicate in what respects it is material and necessary?

Mr. Ray: I can't at this time.

Trial Examiner Leff: Would these witnesses be available if we were to adjourn to Cleveland at this time?

Mr. Ray: No.

Trial Examiner Leff: Are you asking an adjournment on the ground that they are not available?

Mr. Ray: On the ground that we have not had a chance to talk to the men but that the men are named in the board's case and that presumably their testimony is material and the extent to which their testimony is material can't be determined until we have had a chance to contact them.

Trial Examiner Leff: In what respects have they been named in the board's case?

Mr. Ray: As men having made anti-union statements.

Trial Examiner Leff: All five?

Mr. Ray: Coercive and discriminatory, just generally. We have to check again through their employers and locate them. We have to check through the owners of the vessel.

Trial Examiner Leff: I wondered whether these witnesses are available at or near Cleveland. I, for one, would be pleased to take the testimony at the boats.

Mr. Ray: Let me tell you what the practical problem is. We would have the same problem that we have had at Duluth except that it would be accentuated because they would be at different ports, we would be going from one port to another, with the vessels stretched over a period of two or three weeks, perhaps, and then we wouldn't know if we would be in a position to get all of them, so that is the practical problem that is confronting us, and that is the reason it was suggested to Mr. Belkin that the logical time to close the respondent's case and any rebuttal that the Board has could be after the close of navigation when all the men could be brought in to Cleveland and the case closed in four or five days.

Trial Examiner Leff: Why wasn't that suggested when we met in Cleveland?

Mr. Ray: As I recall now—I don't recall now whether the suggestion was made to the trial examiner but it has been the respondent's attitude throughout the case that that is the logical and proper way to handle the proposition.

Trial Examiner Leff: What was the point of coming to Duluth at all?

Mr. Ray: I have just said what the point was. The trial examiner recalls very vividly, I presume, the attitude of the union when the question of postponement was dealt with and it was upon the union's urging that ninety per cent of the respondent's vessels came to this port, that the port was decided as the place at which most of the respondent's witnesses could be secured and it was to avoid any suggestion that we were attempting to delay the hearing that we talked the situation over with Mr. Belkin and confirmed our discussion with him by letter. I ask the trial examiner's permission to read into the record the letter sent by Mr. Hinslea to Mr. Belkin confirming our discussion.

Trial Examiner Leff: You may file the letter, but what I want to know is how you expected that it would avoid delay by going to Duluth if you knew all along that eventually you would request an adjournment to December 1st. As long as you were reserving any witnesses for December, all the testimony we took here in Duluth, working all hours of the night, can't save us possibly more than a day or two.

Mr. Ray: I have told you the reason why we did what we did is that the examiner had fixed the date of the hearing and the union and Board were urging that we go ahead at that time. It was their desire to go ahead as quickly as possible with the case and we did it, and now we are still confronted with the same practical problem that we had at that time. Now, to show you that this is not simply an idea that has been germinated in our minds, I have told Mr. Belkin, the attorney for the Board, and yourself informally that it is the practice on the Great Lakes for all Federal Courts—and I know this to be a fact in the Federal Courts in Buffalo, Cleveland, Toledo, Detroit, Milwaukee and Duluth, that all admiralty cases which involve the use of seamen as witnesses are set in an Admiralty Term which begins usually the first or second week in January and goes through until March, and in many instances of which I have personal knowledge, counsel for personal injury claimants have applied to the Court to have—with motions to have the cases advanced and tried during the navigation season and upon opposition being made to the motion by the steamship companies involved, the courts, without question—and this involves not only personal injury cases but wage and hour cases in which seamen are plaintiffs, refused to advance the cases, and the cases have been tried during the non-navigation season. Now, the reason back of the attitude of the Federal Courts is the same as exists in this case. The witnesses are not available without holding up the vessels, and the only reason that the testimony of the respondent has been taken up to this point is because the trial examiner and counsel for the board and union and counsel for the company have been willing to sit day and night as the vessels arrive.

Trial Examiner Leff: With the view to expedite the final disposition of the case.

Mr. Ray: Let me—

Trial Examiner Leff: I have assumed all along what your position was because you have indicated it to me informally.

Mr. Ray: There is one other thing I should like to state. I have been informally advised that several months will elapse after this case has been submitted before any decision will be reached and in the light of that information it is very difficult for me to see in what manner the charging union or the board can be adversely affected by an adjournment to the requested day. That is all.

Mr. Belkin: Continuing, the history of this discussion as I know it briefly is this. The board filed its complaint on July 10th, almost two months ago. Shortly thereafter I was called into a conference by Mr. Taag, the Eighth Regional Director, in the presence of Mr. Hinslea. At that time I was asked what my position was on the matter of an adjournment. Before the case was heard I opposed any postponement. As a matter of fact, I have always opposed postponements, I think, when I felt that they weren't in accordance with the policy of the Act and I felt that the case should be heard at once. However, the Eighth Regional Director consented to a three or four week postponement over my objection. I had nothing to do with the question of adjournment of this hearing at any time, until at the request of the trial examiner I was asked to meet Mr. Hinslea and Mr. Ray after we adjourned in Cleveland to determine whether they could formulate a schedule and set a time for a hearing. As Mr. Ray has said, I met the counsel for the respondent and they told me their difficulties. At no time did counsel for the respondent mention a November or December date adjournment, as their letter indicates. I should rather say, even as their letter will show. They mentioned no such time. In fact, the first time that I heard a November or December date mentioned was in the course of the hearing here at Duluth. Counsel for the respondent did say that they might be able to finish at Duluth and might like another bite or so, as I recall their language. The only comment that I made on that was that I would be willing to consent to coming back to Cleveland and wind up, but other than that I wouldn't state my position, feeling that it was not within my province but rather that of the trial examiner. I wrote a memorandum sum-

marizing my conversation with Mr. Hinslea and Mr. Ray as I saw it and sent that to the trial examiner. In that letter I made the statement that beyond an adjournment to Cleveland shortly after the hearing that I would object to any further postponements. As I have said before, it is almost two months now since we began this hearing. As far as the question of obtaining the personnel of the company for this hearing and holding up ships, I want to point out that the company holds the ships up and has been doing so this week for eighteen to twenty hours at the Soo for inspection. Surely the Dickson could have been held up another hour or two for witnesses.

Trial Examiner Leff: We don't know if the Dickson was here.

Mr. Ray: I will have to check.

Mr. Belkin: My recollection is that he pointed that out. Even so, we, at the risk of our health, have been meeting at odd hours and attempting to aid the company in putting its case in. I suppose it is a truism that no one is ever able to put their entire case in. The board has not been able to do so, our witnesses are literally scattered over the seven seas and although we have affidavits from many of the men we have not been able to locate all of them and don't expect to. Now, if the respondent argues that it has had—will you strike that. If the respondent argues that it will experience some difficulty in getting four or five licensed and nine or ten unlicensed personnel on other than the Pittsburgh Steamship Company's—

Trial Examiner Leff: Let me interrupt. Aren't the unlicensed personnel subject to subpoena? I understand that the licensed personnel may not leave a ship, and it was for that reason we adjourned to Duluth, but the unlicensed men are subject to subpoena.

Mr. Ray: You can subpoena licensed personnel. You can subpoena anyone.

Trial Examiner Leff: We had in mind, in consenting to come to the port of Duluth, we took into consideration your statement that a ship could not sail without a full complement of licensed personnel but that does not apply to any of the members of the unlicensed personnel.

Mr. Belkin: Continuing, as I was saying, as to reaching four or five licensed officers and nine to ten unlicensed

personnel on the Great Lakes ships other than those operated by the Pittsburgh Steamship Company, I would like to point out that information concerning the whereabouts of these men is available to the respondent by appealing to the Great Lakes Carriers Association of which it is a member and whose records are available to it. That is if there be any financial difficulty in holding up a ship while we obtain testimony or in replacing officers temporarily with other men, I think that that has no bearing in this matter in view of the fact that there is a complaint here of the violation of the Act and that the rights of individuals have been violated. Now, I am willing to go to Cleveland within a week and hear the testimony that the company can put on then. I have always been willing to do that, but I feel that any postponement to November or December would be a grave injustice to all these individuals whose rights have been violated. It seems to me that if our Act is to be at all effective, then its processes must be speedy. Now, I don't mean this in a personal way, but in the course of Mr. Ray's address to us he pointed out that part of the time between July 10th and this day he was away on vacation. Of course, he has a right to a vacation. I have no objection to make.

Trial Examiner Leff: I think his motion to adjourn is based primarily on the ground that certain necessary witnesses are alleged to be unavailable.

Mr. Belkin: I thought his other ground was that they didn't have time to reach them all.

Mr. Ray: That was in reply to the trial examiner's question put to me as to whether the testimony of these witnesses was material.

Mr. Belkin: In summation, the board has made every effort to assist the respondent and to give it all the time it should have needed to complete its case. As to granting a further adjournment, I think it would be unjustified in the light of all the issues surrounding this case. I believe the union wishes to be heard.

Trial Examiner Leff: What is the position of the union?

Mr. Hawks: The union's position is that we object to any delay, and as far as we are concerned, if the ships referred to, the Dickson and the Buffington, can't be con-

tacted here, we would be willing to continue the hearing on the low lakes, in any given area. At the present time we find that many of the crew members on the Pittsburgh ships find themselves under pressure where they are unwilling to identify themselves with the union and its attempt to organize this company, because many of these men feel that they have no guarantee against coercion and other methods that we contend have been used to keep them from joining the union. The union would be willing to assist the representatives of the government or the company in locating any vessels concerned if the company would care to state which ships they are so that it would be possible to proceed immediately with the hearings.

Trial Examiner Leff: I believe the company probably has the same sources of information the union has.

Mr. Ray: There is no question about that.

Trial Examiner Leff: I think we should have a schedule submitted showing just where each of the ships will be within the next two weeks; that is, the two ships in the Pittsburgh fleet and the several other ships on which you say you have licensed officers formerly in the employ of the respondent, who were alleged in the board's case to have made anti-union remarks.

Mr. Ray: That can't be done until we return to Cleveland.

Trial Examiner Leff: Why can't it be done by phone?

Mr. Ray: It can't be.

Trial Examiner Leff: Why?

Mr. Ray: It would be a question of checking a lot of the records and it is the type of information that can't be secured.

Trial Examiner Leff: The hearing will be recessed until noon and I direct you to secure that information. Before we recess, Mr. Ray has indicated that he wants to file, as part of the record in this case, the letter which was written to Mr. Belkin by Mr. Hinslea. Will you mark this letter for identification as Respondent's Exhibit 1.

(Thereupon the letter above referred to was marked as "Respondent's Exhibit No. 1," for identification.)

Mr. Belkin: I have no objection to its receipt.

Trial Examiner Leff: The letter will be received in evidence as Respondent's Exhibit 1.

(Thereupon the letter above referred to, previously marked as "Respondent's Exhibit No. 1," for identification, was received in evidence.)

Trial Examiner Leff: We will recess until 12 noon.

(Whereupon at 7:45 A.M. a recess was taken until 12 noon.)

12 Noon.

(After Recess.)

(Whereupon the hearing was resumed, pursuant to recess, at 12 noon.)

Trial Examiner Leff: The hearing is in order. Mr. Ray, have you been able to obtain for me the information which I requested.

Mr. Ray: I have been able to secure the approximate arrival time of the steamer Buffington and the steamer Dickson. The Buffington is scheduled to arrive at 6 p.m. on September 8th, and the Dickson is scheduled to arrive at 1 a.m. on September 9th, both vessels to arrive either in Duluth or Two Harbors. Now, in connection with the other information that you requested me to secure, I have been in touch with Mr. Hinslea in Cleveland and he has checked through the Lake Carriers Association and does not find that they can supply him with any information, and the only other source would be to contact the individual owners themselves, which he has not been able to do at this time. So I have to report that I have no information for you with respect to the four or five licensed officers whose testimony the respondent considers material to the defense of the case, and they are on vessels neither owned nor controlled by the Pittsburgh Steamship Company. Before going on, however, I desire to say this, in connection with those witnesses. I told the trial examiner in answer to a direct question as to the materiality of their testimony, that the witnesses were necessary and material because they were directly connected with alleged anti-union statements. Since making that statement to the trial examiner, I have checked the record again and I find that I was in error as to that portion of my statement to the trial examiner, but that the men involved are men who were present during the

time the alleged anti-union statements were made and we consider them necessary and material in the defense of our case. As the situation presently exists, it will require both counsel and the trial examiner remaining in Duluth for five days without any of the vessels or witnesses being available during that time, and if an adjournment were ordered until the arrival of the Buffington, and thereafter, after the witness on the Dickson was taken, the case will further adjourn to Cleveland, it would not be possible for the respondent to go ahead with its testimony in Cleveland within a period of at least a month. As the trial examiner has been heretofore advised, it is necessary for us to locate the witnesses, to interview the witnesses, and to make arrangements to have them taken from the vessels or to meet the vessels at the specified ports on either lower Lake Erie or lower Lake Michigan. In addition to these witnesses, the master of the steamer Olds, during the 1944 season, is at present in Canada, and some time will be necessary to make arrangements for him to return to Cleveland to be available for his testimony. Now, in view of all of these practical difficulties, the respondent feels that it should have at least a month from the present time within which to go forward with the remainder of its case.

Trial Examiner Leff: I should like to ask you this. If I were to adjourn the case for a period of approximately four weeks, fixing the place of hearing at Cleveland, either at the hearing room of the Board's regional office, or such other place as the regional office might designate for that date, will the respondent be prepared to call all the witnesses that it considers material and necessary for its case and have them available on that date?

Mr. Ray: The respondent, if the trial examiner so orders, will agree to have its witnesses—all the witnesses which it can secure there at that time.

Trial Examiner Leff: That is at the hearing rooms without necessitating our traveling about to take testimony on the ships, is that correct?

Mr. Ray: Yes, and will agree to put in its entire—the remainder of its case at that time.

Trial Examiner Leff: And the understanding would be then that the respondent's case will be completed at that time—I mean, of course, respondent would have as many consecutive days as would be necessary to complete

its case, but it would complete it in one series of consecutive days.

Mr. Ray: The respondent so agrees.

Trial Examiner Leff: What is the position of the Board?

Mr. Belkin: The Board's position is unchanged.

Trial Examiner Leff: What is the position of the union?

Mr. Hawks: As I haven't had a chance to get in touch with our national office on this proposition, I cannot give a decision.

Trial Examiner Leff: The hearing is adjourned to October 2, 1945, at Cleveland, Ohio, at 10 a.m. The meeting place will be at the hearing room of the Board's regional office at Cleveland or at such other place as the regional office may designate on appropriate notice. The hearing is adjourned upon the understanding expressed by Mr. Ray that the respondent will be expected to complete its entire case at the adjourned date or on such later dates immediately following as may be necessary to present its remaining evidence.

(Whereupon at 12:30 p.m., Wednesday, September 5, 1945, the hearing was adjourned to Tuesday, October 2, 1945, at 10 a.m.)

713 Public Square Building,
Cleveland, Ohio,
Tuesday, October 2, 1945.

Pursuant to adjournment, the above-entitled matter resumed at 10 A. M.

BEFORE:

ARTHUR LEFF, Esq., Trial Examiner.

APPEARANCES:

LOUIS S. BELKIN, Esq.,
Public Square Building, Cleveland, Ohio,
appearing on behalf of the National Labor Relations Board.

JACK LAWRENSON,
Vice-President, 17 Charles Street, New York, N.Y.,
appearing on behalf of National Maritime Union of America, C.I.O.

L. C. HINSLEA, Esq.,
LUCIAN Y. RAY, Esq.,
1970 Union Commerce Building, Cleveland, Ohio,
appearing on behalf of the Pittsburgh Steamship Company, the Respondent.

Trial Examiner Leff: The hearing is in order.

Mr. Belkin, does Mr. Rosenfeld expect to be here today? Did you hear from him?

Mr. Belkin: I talked to Mr. Rosenfeld on the long distance telephone yesterday, and he asked me to state to you that he would not be present at the hearing, and he asked leave to file a memorandum brief within seven days from the close of the hearing.

Trial Examiner Leff: You may advise Mr. Rosenfeld that he will be able to file such a brief.

Mr. Belkin: Thank you, on his behalf.

Mr. Ray: Will you mark this for identification, please.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 2 for identification.)

Mr. Ray: If the Trial Examiner please, Captain Clarence Wallace was Master of the Steamer Horace John-

son during the sailing season of 1944. Captain Clarence Wallace has been retired from the Pittsburgh Steamship Company for reasons of physical disability.

We contacted Captain Wallace in view of having him come to Cleveland to testify at this hearing. Knowing that there might be some question as to his physical condition, we had him examined by a doctor, and the doctor has forwarded to us the letter which has been marked for identification Respondent's Exhibit 2, and we offer the letter at this time.

Mr. Belkin: I have no objection to it.

Trial Examiner Leff: Respondent's Exhibit 2 will be received.

(The document heretofore marked Respondent's Exhibit No. 2 for identification was received in evidence.)

Mr. Ray: Mr. Hunger, will you take the witness stand, please?

FREDERIC F. HUNGER, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Trial Examiner Leff: What is your full name?

The Witness: Frederic F. Hunger.

Trial Examiner Leff: And your address?

The Witness: 1609 West Erie Avenue, Lorain, Ohio.

Q. (By Mr. Ray): What is your occupation, Chief? A. Chief Engineer.

Q. And by whom are you employed? A. Pittsburgh Steamship Company.

Q. How long have you been employed by that company? A. Oh, I'd say since 1917.

Q. What licenses do you hold? A. Chief Engineer.

Q. And how long have you had that license? A. Well, that license, I have had about—I'd have to figure back on it.

Q. Just approximately? A. Oh, around 15 years.

Q. During the sailing season of 1944, were you Chief Engineer on the Widener? A. Yes, sir.

Q. Do you recall a seaman on board that vessel by the name of Babin? A. Yes, sir.

Q. Just in general, what are your duties as Chief Engineer in connection with the engine room, Chief? A. Well, I am in full charge of the engine room and everything pertaining to the engine room, pumping out, and taking care of everything.

Q. What if any authority or control do you exercise over the assistant engineers and the other members of the engine crew? A. Full authority over them.

Q. Now, was Babin a member of the engine crew? A. No. He was a forward end man.

Q. Do you recall what his rating was? A. He was a deck watch.

Q. Now, at any time during the 1944 season, state whether or not you had any conversations with Babin in the engine room of the Widener? A. He came down in the engine room and I told him to leave the engine room at once; I didn't want him down there, because he could do everything through the telephone; that the mates did all the conversation through the telephone.

Q. What if anything was he doing in the engine room, Chief? A. Came down there to tell them to shut off the water. And, of course, that should be done through the telephone. The mates would get that done through the telephone.

Q. What was the reason you told him to leave the engine room? A. Well, he was down there with the literature, and talking to the oiler that had other duties to do, perform, while pumping out. I told him to leave the engine room, stay out of the engine room, and also stay out of the quarters and not keep the men awake.

Q. You told him to stay out of the quarters because he was keeping the men awake? What was that—strike that. A. Well, I didn't want him around the room.

Q. Wait a minute.

Mr. Belkin: Let him finish. He was making a statement.

A. I didn't want him in the room at all because he kept the men awake, and the men had to get their proper rest.

Q. How did you know he was keeping the men awake? A. Well, complaint from one of the oilers; told me he came in at all hours and kept them awake, and he told me about it, so I told him to stay out of the engine room and also the living quarters.

Q. Did Babin stay out of the engine room after you told him to? A. Yes, he did.

Q. And what duties did the oiler have to perform at the time that Babin was talking to him down there? A. Well, he was oiling the pumps and opening valves and closing valves and watching the water, and so forth, which is very essential when pumping out.

Q. Chief, where is the board on which the soundings are marked? A. The board the soundings are marked on is in the fantail and the bulkhead is between the oiler's room and the fantail.

Q. Approximately how far from the engine room, itself, was that board located? A. About five feet from the engine room door.

Q. Was it necessary for anyone from the forward end to go into the engine room to mark the soundings? A. It was not, no.

Q. Was it necessary for anyone from the forward end to go into the engine room to accomplish anything that related to the operation of the vessel? A. Not a bit.

Trial Examiner Leff: Isn't the fantail in the engine room?

The Witness: No, sir.

Trial Examiner Leff: Is it right adjacent?

The Witness: There is a bulkhead between the engine room and the fantail.

Trial Examiner Leff: But you have to enter the door to the engine quarters, the door located on the outside of the vessel, to get into the fantail, don't you?

The Witness: No.

Trial Examiner Leff: Is the end exposed—

The Witness: That's a different end, entirely.

Trial Examiner Leff: How do you get to the fantail?

The Witness: You have to come up on deck from the engine room.

Trial Examiner Leff: When you get on the deck, do you go through a door?

The Witness: Out on deck, you come through a door.

Q. (By Mr. Ray): Is that the same door used to get into the engine room? A. No. There is another door between the fantail and the engine room.

Q. Yes. But, before you get to the engine room, you have to get to the fantail from the deck, isn't that so? A. Yes, sir.

Trial Examiner Leff: All right.
Will you proceed.

Q. (By Mr. Ray): Chief, with the exception of this one conversation that you had with Babin, did you have any other conversation with him relating to staying out of the engine room or leaving the men alone? A. That's the only time.

Q. Did you at any time have any conversation with Babin about Union matters? A. Not a bit. I never talked to him about the Union at all. Never talked Union.

Q. Now, what was the custom on the Widener while the tanks were being emptied and filled with respect to the relaying of information as to how much water should be put in and as to when it should be pumped out? A. It is all regulated through the pilot house and over the telephone; all through the telephone.

Q. Who would normally transmit it? A. The Captain always called up or the Mate always called up through the Captain's orders to start the water in all the tanks. And when we got to the dock, the Captain called up and said, start pumping out.

Mr. Belkin: At the dock, did you say?
The Witness: At the ore dock.

Q. Chief, did you at any time tell Babin that he could not talk to the men while they were off watch and while he was off watch? A. I did not.

Q. Now, do you recall whether or not there was a meeting of chief engineers and captains during the spring of 1944? A. Yes.

Q. Do you recall where that meeting was held? A. 1944; it was held at the Cleveland Hotel, or over at the Hollenden. Hollenden.

Q. At the Hollenden Hotel? A. That's right.

Q. And do you recall approximately when it was held? Not the exact date, but— A. Well, in March.

Q. In March? A. In March. I can't tell you the date.

Q. Chief, what, if anything, was said by any of the officials of the Company, in your presence, relative to the coming election and as to the attitude of the chief engineers and the captains with respect to the coming election and the Union, generally? Do you recall whether anything was said? A. Well, just to the safe operation of the ship, that's all.

Q. What do you mean by that, Chief? A. Well, to see that everything—everybody was doing their duties and carrying out their orders, fulfilling their orders for the safe operation of the ship; to see that there was nothing that was undone.

Q. Well, now, was anything said with respect to the coming election and the fact that— A. I don't recall that.

Trial Examiner Leff: Well, is it your testimony that nothing was said about the coming election, or that you don't recall whether there was or was not?

The Witness: Well, I never heard any. If there was some, I couldn't say.

Mr. Ray: You may cross examine.

Cross Examination.

Q. (By Mr. Belkin): Chief, let's take up this question of filling the tanks and letting them out. You testified today that the general custom for the Widener was to do it all through the telephone. In other words, as I understand your testimony, when your ship came to an ore dock it was necessary to let the water out of these tanks, is that right? A. That is right, pump out.

Q. So, the Captain, when the ship docked, would call up, is that right? A. That's right.

Q. And would tell you to let the water out? A. Yes.

Q. Now, did any member of the crew watch the gauges as the water went out of these tanks, in addition to yourself? A. That is right.

Q. And who was that member of the crew? A. That was a deckwatch.

Q. Where would you stand, Chief, while the water was being let out of the tanks? A. I was in the engine room, and the water was marked up on the board in the fantail.

Q. You would stand in the engine room? A. Engine room.

Q. How far would you be from the fantail? A. I would say 10, 12, 15 feet.

Q. Could you see the fantail from the engine room? A. Yes, sir.

Q. Would that mean that the door was open? A. That door was open.

Q. Where would the deckwatch stand? A. He'd be in the fantail. He'd mark the soundings on the board in the fantail, and go back up on deck again, but never entered the engine room. He was never supposed to, because the board was in the fantail.

Q. Is that the custom on any ship you have ever been on? A. Any ship I have been on.

Q. Now, chief, has there been any occasion, to your knowledge, when this operation was being done, when the deckwatch would step casually into the engine room and talk to you? A. He did it in the spring, when I made him stop it.

Q. But it was being done? A. He done it around the first or second trip, but I made him stop it.

Trial Examiner Leff: May I interrupt a minute?

I want to get a good word description in the record in relation to the fantail and its relative position to the engine room.

EXAMINATION.

Q. (By Trial Examiner Leff): The fantail is located in the aft end of the vessel, is it not? A. That's right.

Q. Now, how do you get to the fantail from the deck? A. You come down the stairs.

Q. You come down a flight of stairs? A. That's right.

Q. How long is the flight of stairs? A. Thirteen, 14 steps.

Q. How far is the distance from the engine room to the fantail? A. To the fantail from the stairway, you mean?

Q. No, from the part of the fantail nearest the engine room. Is it immediately next to the engine room? A. Well, it is adjoining the engine room. There is a bulkhead in between.

Q. On the same level? A. No, not—well, it is, from the upper engine room, yes.

Q. So, there is a partition between the fantail and the engine room; that is, the upper level of the engine room, is that correct? A. That's right.

Q. And there is a door between? A. Yes, sir.

Q. Is that door usually open? A. Yes.

Q. How wide is that door? A. Well, it is a natural door. I imagine maybe 30 inches.

Q. Yes. And below the upper level of the engine room there is a lower level? A. There is a lower level, yes.

Q. How far is that from the upper level? A. About 15 feet.

Q. And that is where the engines are, in the lower level, is that so? A. The what?

Q. What is on the lower level? A. Well, your main engine, part of your main engine, your pumps.

Q. And what is on the upper level? A. Your main engine and your auxiliaries.

Q. The upper level is a sort of balcony floor, isn't it? A. That's right.

Q. And that's right next to the fantail on the same level? A. That's right.

Q. Now, is it a correct statement to say that the fantail and the engine room are considered the engineers' place of work on board vessel? A. No.

Q. Who works in the fantail? A. Sleeping quarters are in the fantail. That's not the engine room. That's sleeping quarters.

Q. Are they the engineers' quarters? A. Belong to the engineers department, yes. But they belong to the firemen and coal passers. That's where they sleep, in the fantail. That's sleeping quarters.

Trial Examiner Leff: I think it is clear enough for my purposes now.

You may proceed.

Q. (By Mr. Belkin): I was asking you about your procedure as you stood there in the engine room watching the deck watch mark on the board what the sounding was, and you said that the deck watch on the Widener had acquired the habit of coming in and talking to you while the tanks were being loaded or unloaded, isn't that true? A. Never talked to me about the tanks.

Q. No, but he'd come in the engine room, and you called him on it, is that right? A. That's right, he came in there once. He came to the lower engine room where the pumps are located.

Q. And after he had done that several times, you admonished him not to do it? A. He distracted the attention of the oilers and kept them from their work, and I ordered him out.

Q. The deck watch in each case was Babin? A. That's right.

Q. Were there any other deck watches that performed this function of checking the soundings in the tanks and marking them on the board? A. There's three shifts. Whenever one man had his watch over, the other took it.

Q. There were at least two other watches who performed this same function? A. (Witness nods head affirmatively.)

Q. You said yes? A. Yes.

Q. You see, when you shook your head in affirmation, I don't believe the reporter was able to pick it up.

Now, Chief, did these other men at any time during your knowledge come into the engine room and chat with the men while they watched the soundings? A. I told them all to stay out, not only the one, but the other two.

Q. The other two had been doing the same thing? A. I couldn't stay there all the time while she's in dock.

Q. But, to your knowledge, they had been doing that? A. I told the assistant engineers to have them stay out of the room, the same as Babin.

Q. Now, on your previous voyages on the ships of the Company did you find deck watches stepping into the engine room and chatting with the men there while the tanks were sounded? A. Well, not on any boat I was ever on. It wasn't allowed. I haven't allowed it.

Q. I take it there might be other ships— A. There might be other boats. I don't know.

Q. As a matter of fact, men aboard ship often talk together? A. Oh, sure.

Q. If ... y are close to one another, don't they? A. Yes.

Q. Do you have any objection to that, Chief? A. What is that, talking to one another?

Q. Yes. A. Well, I don't when they are off duty. That's O.K. But not while they are performing their work.

Q. And have you insisted on all occasions that the men under your direction shall not talk while they are working? A. Not when they've got responsible jobs to handle; while they are pumping out or pumping in I don't allow them to come down in the engine room and talk at all.

Q. Do you allow your own engineering assistants, the men like the coal passers, and oilers, to talk while they are working? A. Oh, yes, I allow that amongst themselves, relaying word to one another. That's O.K.

Q. Suppose they talk on such subjects as women and things like that while they work? Do you object to things like that? A. Well, I am never around when they do that, if they do it. They probably do it while I am not around, yes.

Q. In other words, while you are present you insist the men who work on machines talk about nothing but their work, is that correct? A. That's right.

Q. Is that a universal custom, or rule, aboard ships of the Company? A. Well, it just depends on who is on the ships, that's all. Maybe there's some ships that do, and other ships that don't. I suppose that's a different custom.

Q. Now, in your talk with Babin on this occasion when you told him to stay out of the engine room, could you fix the time for us, such as the month in which it occurred? A. Well, it was in the latter part of May, first of June, something like that—April or May, rather.

Q. You'd say it was about the first of May or last part of April? A. Something like that.

Q. How long had the ship been sailing at that time? A. Probably, maybe around the fifth or sixth trip, something like that.

Q. A trip takes about a week, I imagine? A. Seven days, yes, something like that.

Q. So this was five or six weeks after the ship had begun its sailing? A. Yes.

Q. Up to this time you had not spoken to Babin about staying out of the engine room? A. No, never.

Q. Although you knew he was doing so? A. No, I didn't know he was doing it. I just happened to be there the time he came in there.

Q. Didn't you just testify a minute or two ago that you knew Babin had been doing this on several occasions? A. I never knew he was down there, no. I didn't happen to be down. But this time I caught him down there.

Q. Well, I understand, then, that you had known about it, but you never saw him yourself? A. I never knew he was down there, but I just happened to catch him this time that I was down there.

Q. And you had no previous knowledge he was accustomed to doing this? A. No, I didn't. I didn't just happen to be in the room, I wasn't down there.

Q. When was it you and your assistants admonished the other two deck watches? A. I told the assistants to keep everybody out of the engine room except the immediate crew.

Q. When did you tell the assistant to keep everybody out of the engine room except the immediate crew? A. I told him right away. I told him in the spring to do that, on the first trip, and I imagine they overlooked it and let them come down and tell about shutting off valves. And thereafter, I told them to do everything over the phone about the fantail.

Q. When did you do it the second time? I imagine there was a second time? A. I told them the second time in Two Harbors.

Q. This was in Two Harbors. Could you fix the date, approximately? A. I couldn't tell the date.

Q. Was this on the fifth or sixth trip, or was it later? A. No, about that time, on the fifth or sixth trip.

Q. Did you ever check with your assistants to find out whether they instructed these watchmen? A. Yes, I asked them, and they said they carried the instructions through.

Q. When did you ask them that? A. Well, it was about around that time, fifth or sixth trip, I imagine.

Trial Examiner Leff: Will you keep your voice up. You are letting it drop so that it is almost inaudible.

Q. When you saw Babin down there, just what was he doing? By "down there," I mean in the engine room, on this particular occasion when you told him to get out? A. Well, he was talking with the oiler and had some literature down there, and I figured he was trying to talk him into something, so I just ordered him out and told him to do all his transactions out of the engine room.

Q. Did you hear what he was saying to the oiler? A. No, I did not.

Q. Who was the oiler, do you recall that? A. That was Warfield.

Q. What was his first name? A. Chester.

Q. Is he still with the Company, do you know? A. No, no, he is not.

Q. How long ago did he leave the Company? A. '44.

Q. What Union literature did Babin have in his hand when he was talking to Warfield? A. I didn't see it. I just seen it in his pocket, sticking out of his pocket, and I thought it was something pertaining to the—I just told him to get out and stay away.

Q. Pertaining to the what? A. Well, I didn't know what it was, paper, literature, and I figured it was some kind of data.

Q. Probably Union data, since he was a Union organizer, isn't that right? A. I didn't know he was an organizer or not.

Q. Oh, you didn't know he was an organizer? A. I found out later, yes.

Q. Is it your testimony, then, Chief, at the time you spoke to Babin down there in the Engine Room, the fifth or sixth voyage of the ship that you had no knowledge that he was an organizer? A. I didn't know it.

Q. Didn't you testify this morning, Chief, that an oiler had come to you and said that Babin was keeping the men up at night and preventing them from getting their sleep? A. Yes, but that was later on. That was later on in the season.

Q. When did that occur? A. I imagine around the fifth or sixth trip.

Q. I didn't get that. You will have to keep your voice up. You see, you are hard to hear. A. The fifth or sixth trip.

Q. The fifth or sixth trip? A. Yes. That's why I didn't want him down there.

Q. Your testimony is confusing, if I may say so, Chief, because you said you spoke to Babin on the sixth or seventh trip out. A. Fifth or sixth, I said.

Q. On the fifth or sixth trip out? A. Yes.

Q. And the fifth or sixth trip out the oiler came to you and told you Babin was keeping them from getting their sleep? A. Yes.

Q. And then you also testified you didn't know Babin was coming in and keeping the oilers from getting their sleep until after you had seen him in the engine room. You testified to that, didn't you, Chief? A. Yes.

Q. Now, didn't you, in your conversation with Babin, say, "You are keeping the men from getting their sleep and I want you to stay out of their quarters"? A. I told you when he was down in the engine room I told him to stay out of the engine room, and also the sleeping quarters.

Q. Why did you tell him to stay out of the sleeping quarters? A. Because this oiler told me that he was keeping them from getting their sleep, coming there, in and out, and they were not getting proper rest.

Q. It is your testimony, now, the oiler spoke to you before you spoke to Babin, is that right? A. What is it?

Q. Is it your testimony the oiler spoke to you about Babin disturbing the men in their quarters before you spoke to Babin in the engine room? A. Well, I don't recall that.

Q. Well, now, since you have testified in several ways on this question, let me have the facts as you recall them, now. Did the oiler speak to you about Babin coming in and waking him up, or waking the others up, before you spoke to Babin in the engine room? A. Well, I believe this was after, after Babin was in the engine room that the oiler came to me.

Q. How long after did this oiler come to you? A. Well, I imagine it was a week or so. I don't remember now.

Q. Was it the same oiler, Warfield, or another fellow? A. No, it was Warfield.

Q. It was Warfield. Now, Chief, why did you say to Babin, "I don't want you to disturb the men and keep them from getting their rest," if you had no knowledge that he was doing so? A. Well, when a man comes and tells you that he is keeping them awake, what are you going to do?

Q. I understand you testified that this man told you Babin was keeping them awake a week after you spoke to Babin, isn't that true, Chief? A. Week after? Yes, it's practically a week after.

Q. So that at the time you spoke to Babin you had no knowledge that Babin was going into the quarters of the men, is that true? A. That's right.

Q. Nevertheless, you said to Babin, "I don't want you to talk to these men and keep them from getting their rest," isn't that true, Chief? A. I told him not to talk to them around the engine room, that's all.

Q. Didn't you also tell him to keep out of their quarters? A. That's right, I told him to keep out of their quarters.

Q. Now, Chief, when Warfield spoke to you about Mr. Babin keeping the men awake and keeping them from getting their rest, did he tell you what he was saying to them? A. No, just said he came into the room and started talking. And he said he didn't want him in the room while he was getting his rest. He didn't say what he was talking about.

Q. Didn't you ask him what he was talking about? A. No, I didn't ask him. Just told him to stay out.

Q. You didn't ask him whether he was talking about women, or something like that? A. Didn't ask, no.

Q. Did you investigate and find out if it was true that Babin was keeping your men awake? A. No. That's as far as I went, told him to stay out of the engine room and also sleeping quarters. If he wanted to do any talking, talk on deck.

Q. You didn't make any investigation to see whether Warfield was telling the truth? A. No.

Q. Nevertheless, you went ahead and told Babin that? A. (Nodding head.) Didn't want him in the rooms.

Q. When you nodded your head, you meant yes, is that it? A. Yes.

Q. Now, you have said that Babin had Union literature—pardon me. You didn't say that. You said Babin had literature in his pocket when he was talking to Warfield in the engine room? A. Yes.

Q. You didn't see what kind of literature it was? A. No, I didn't.

Q. It might have been a letter from Mr. Ferbert, could it not? A. I wouldn't say that. I don't know.

Q. It could have been anything, couldn't it? A. Could have been anything.

Q. Did you see him handing any literature to Warfield? A. He had some out one time while he was down there and I made him get out.

Q. Then, you did speak to him on another occasion? A. No, that was the same time, that I had looked down the grating and he had some literature in his pocket and he started to take it out and then put it back in his pocket.

Q. So he didn't hand it to Warfield? A. Didn't hand it to him. He started to show him something and saw me coming down and put it back in his pocket.

Q. And you looked through the grating, is that it? A. That's right.

Q. Where is the grating? A. Right above his head.

Q. Would that be on deck? A. No, that's on the main deck.

Q. That's what I mean. The grating is on the main deck above the engine room? A. Above the cranker room.

Q. And you looked through that grating and saw Babin take out what looked to be literature and begin to offer it to Warfield, and then put it back into his pocket? A. That's right.

Q. And then you hurried down in the engine room from the deck, and ordered— A. Ordered him out.

Q. Did you ask him at that time what he was about to offer to Warfield? A. No, I didn't ask him.

Q. Did you ask Warfield? A. No, I didn't.

Q. Did you ask him what the nature of their conversation was? A. No, I did not.

Q. When did you first find out that Babin was an organizer of the Union, Chief? A. Oh, around the fifth or sixth, around the fifth or sixth trip, something like that.

Q. Well, this, then, is about the same time as this incident in which you spoke to— A. To tell the truth about it, the time I found out was when he went into the hall in Two Harbors, he went out at Two Harbors and went into the hall.

Q. How did you know that? A. I saw him go.

Q. In other words, you saw him go into the Union Hall? A. No, I saw him standing there when he was running the hall in Two Harbors.

Q. Where were you? A. I was going uptown.

Q. And you saw him? A. That's how I knew he was an organizer.

Q. Did you see any other members of the crew there? A. No.

Q. And did you take it for granted by the very fact you saw him in this hall he was a Union organizer? A. He told me he was a Union organizer.

Q. You spoke to him? A. I went by and he says, "Fellow, here's where I am now. I am an organizer. I am in the hall." Then I went on.

Trial Examiner Leff: Where did you see him?

The Witness: In the hall at Two Harbors.

Mr. Belkin: In the hall at Two Harbors?

Trial Examiner Leff: He was outside?

The Witness: Outside on the street.

Q. (By Mr. Belkin): Now, when did you come in Two Harbors? A. I couldn't recall the time, don't recall the time. I suppose it was April or May, around May.

Q. This was April or May? A. I imagine he got off the boat in May and went up there in the hall.

Q. Would this be about the first week in May? A Oh, no. A week later than that.

Q. A week later than that? A. Yes.

Q. And up to that time you did not know he was an organizer? A. I did not know.

Q. Was it customary for the crew to walk around with literature in their pockets? A. I didn't know what they were doing. He had the stuff in his pocket, and I saw him there, and I figured well, there might be something to it. And I just told him to get out.

Trial Examiner Leff: What do you mean by "there might be something to it"?

The Witness: Well, there might be something connected with it, with this literature in his pocket, and I didn't know, and I thought the best thing to do would be to get out of the engine room while the men were performing their duties, stay out of there. Whether he was trying to show them something I don't know, but I didn't want no conversation in the engine room.

Q. Did you know about that time—and by about that time I mean the last week in April or first week in May—when this incident occurred that the Union was attempting to organize the unlicensed men aboard your ship? A. No.

Q. You didn't know that at all? A. No.

Q. Had the Captain ever discussed that with you? A. No.

Q. When was the election held aboard your ship, Chief? A. I couldn't tell you.

Q. Sometime the first part of June, wasn't it? A. I don't recall it.

Q. Chief, I will show you a couple of Exhibits that we have had here. I want you to look at this. Just take your time with it for a minute or two.

Did you ever see that before, Chief? A. I did not.

Mr. Ray: You had better identify it as to what Exhibit it is, or the record won't mean anything.

Mr. Belkin: I will in a moment.

The witness is looking at Board's Exhibit 2.

Q. (By Mr. Belkin): Did you ever see that before, or a copy of that? A. If it is, I didn't see it.

Q. Do you recall that being posted on the bulletin board of your ship? A. No, I do not.

Q. Was a copy of this letter mailed to you aboard the ship? A. Well, if they sent it, I didn't get it. I didn't see it.

Q. Tell me, Chief, do you generally get circular letters from the president of the Company if the other members, or, I should say, other officers of the crew get them? A. If we have bulletins we put them on the bulletin board and let them see it.

Q. If bulletins come aboard the ship they generally go to the Captain for the forward end and to you for the after end? A. Well, they have bulletins come out for the Captains and chief engineers.

Q. They are separate from the other— A. No, they go on the bulletin board and they read them. Everyone is read.

Q. Bulletins, generally, though, for the after end come to you? And you post them back there, don't you? A. Yes, and the Captain gets his up there and he posts his.

Q. And it is your testimony that this Board's Exhibit 2, dated May 2, 1944, and signed by Mr. Ferbert, the president of the Company, did not appear on your ship? A. What is that? Pardon me.

Q. This didn't appear on your ship? A. Well, I don't know. I didn't see that one.

Q. You didn't see it? A. I didn't see it.

Q. Did you ever see this one? It has been marked as Board's Exhibit 3? A. I believe I saw this one.

Q. When were you first informed by the Company, Chief, that there was going to be an election aboard your ship? A. Well, I don't know. There was some rumor around the boat amongst the crew; said there was going to be an election. That's all I knew.

Q. You never received any official notice from the Company that there was going to be an election? A. I didn't see that one bulletin. It might have been mislaid or something, I suppose. I didn't see it. I imagine I saw this one here (indicating).

Trial Examiner Leff: Referring to Board's Exhibit 1.

Q. Yes. Now, the election was held on or about June 6 aboard vessels of the Company.

Mr. Ray: Between the 6th and the 15th.

Q. Between the 6th and the 15th, Chief. How long before June 6th did you first hear this rumor there was going to be an election aboard the ship? A. I just heard there was going to be an election between the 6th and the 15th, and that was pretty near on the date.

Q. You didn't hear about it until the first of June? A. But I heard about it because the crew discussed it back and forth.

Q. And when did you first hear the crew discuss it? A. Around that date, between the 6th and 15th of the month.

Q. Never heard it before that? A. No, sir.

Q. So, your testimony, now, is you didn't know anything about an election on board your vessel until about— A. I say, there was rumors on board the boat.

Q. When did you first hear those? A. I say around the 15th of the month. It was pretty near almost election time before I heard it myself, directly.

Q. When did you hear the rumors? 15th of what month? A. That was April—or, June. What am I talking about. June, about the 15th.

Q. On the 15th the election was over.

Trial Examiner Leff: The election was in early June, between June 6th and 15th.

A. I say it was almost the 15th of June before I heard anything about it.

Trial Examiner Leff: Did you hear the rumors after the election, or before the election?

The Witness: Before the election.

Trial Examiner Leff: Well, the election was between June 6th and 15th. When did you hear the rumors?

The Witness: It was right in there. It was right close to the 15th.

Trial Examiner Leff: Of June?

The Witness: Of June.

Q. So that it is your testimony that you didn't know anything about this, through rumor or otherwise, until June? A. It was around the latter part of, around the 15th of June before I heard of it, almost election date before I heard it.

(Thereupon a document was marked Board's Exhibit 7 for identification.)

Q. Chief, while you were aboard your vessel in the spring of 1944, did you at any time see this pamphlet? It has been marked for identification as Board's Exhibit 7. A. Did I see it?

Q. Yes, aboard the vessel. A. Yes, I did.

Q. Just about when did you see it? A. I don't recall.

Q. Well, roughly, to the best of your recollection, would you say it was in April or May of 1944? A. I believe it was later than that.

Q. Perhaps the first part of June? A. Something like that. I don't know.

Q. And was it aboard the vessel before the election was held? A. I believe so.

Mr. Belkin: I would like to offer this in evidence at this time.

Mr. Ray: No objection.

Trial Examiner Leff: It will be received.

(The document heretofore marked Board's Exhibit 7 for identification was received in evidence.)

Q. Did you ever discuss that pamphlet with any of the men aboard the vessel, Chief? A. No.

Q. And did you ever talk about it, discuss it, with any of the assistant engineers; that is, your assistants? A. No.

Q. Did you ever hear anyone discuss it in your presence? A. (Witness shakes head.)

Q. You are shaking your head. You mean no? A. No.

Q. As I spoke to you about it before, the record needs an audible answer.

Chief, did you attend the spring meeting in 1945 of the masters and chief engineers at the Cleveland Hotel, here, in this city? A. I did.

Q. This was a meeting similar in nature to that held at the Hollenden in '44, isn't that so? A. I did, yes.

Q. Did anyone at this spring meeting in '45 discuss the question of Union organization aboard— A. No.

Q. —Pittsburgh ships? A. No.

Q. And no one did in 1944, either? A. No.

Mr. Belkin: That is all.

RE-DIRECT EXAMINATION.

Q. (By Mr. Ray): Chief, when you say that no one did in 1944, your testimony is, I assume, that you have no recollection of that? A. Have no recollection of hearing it if they did. I didn't hear it.

Trial Examiner Leff: Were you present throughout the meeting?

The Witness: I was.

Q. Now, at the 1945 meeting, who was present, Chief? A. President of the Company.

Q. I mean, as far as the licensed personnel were concerned? A. At their Cleveland meeting in 1945?

Q. Yes. A. The captains and the chief engineers at Conneaut.

Q. Just from Conneaut? A. I imagine Conneaut, Lorain and Fairport.

Q. Didn't include all the chief engineers and captains of your entire fleet, then? A. Oh, no.

Q. Do you know whether or not any other meetings of any other chiefs and captains were held, either in Cleveland or at any other port during 1945? A. Well, there was three meetings.

Q. Three meetings? A. Three meetings. One in Cleveland and one in Toledo and one in Milwaukee.

Q. And you were present just at the Cleveland meeting? A. Just at the Cleveland meeting.

Q. Now, Chief, for the purpose of the record, will you kindly explain where the crank room is on the Widener with respect to the main deck or the engine room? A. It is a deck below the main deck, below the throttle deck.

Q. And how do you get to the crank room? A. You have to take another flight of stairs to get to the crank room.

Q. And that flight of stairs is located where in the engine room? A. It is on the after starboard side of the engine room.

Q. Now, what is the grating? A. That goes all around the engine, on the throttle deck.

Q. Will you please describe the grating? A. Well, it is a cast iron grating with square holes. It is all open. It has square holes in it, in the grating. That's what they always call the grating, cast iron grating with holes in there for giving light.

Q. Now, is it possible for you, standing on the grating to see the crank room? A. Yes.

Q. And is it possible for someone in the crank room to see up in the engine room? A. Up above, that's right.

Mr. Ray: That is all.

Trial Examiner Leff: Any further questions?

The Witness is excused.

Mr. Belkin: Just a minute.

Trial Examiner Leff: All right.

Re-Cross Examination.

Q. (By Mr. Belkin): Chief, is it your custom to look through the grating each time you go by that grating? A. You are on it.

Q. As you go over it, is it your custom to look down? A. Always. That's what it is put there for, so you can look down and watch a man opening valves and closing valves on a manifold, water manifold.

Trial Examiner Leff: You are excused.

Mr. Ray: Mr. Brown, will you take the witness stand?

GLEN E. BROWN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Trial Examiner Leff: What is your full name?

The Witness: Glen E. Brown.

Trial Examiner Leff: And your address?

The Witness: 1314 Buffalo.

Trial Examiner Leff: This city?

The Witness: Michigan City, Indiana.

Q. (By Mr. Ray): Mr. Brown, by whom are you employed? A. Pittsburgh Steamship Company.

Q. How long have you been employed by that Company? A. About 12 years.

Q. What licenses do you hold? A. Master's, Great Lakes, for two years, and prior to that I held a First Class Pilot's license for nine years.

Q. What vessel are you on now? A. The Joshua A. Hatfield.

Q. Joshua A. Hatfield? A. Joshua A. Hatfield.

Q. In 1944, Mr. Brown, what vessel were you on at that time? A. Horace Johnson.

Q. In what capacity? A. Second Mate.

Q. Now, Mr. Brown, during that sailing season were you acquainted with a seaman on board the Horace Johnson by the name of Sims? A. I knew him, yes.

Q. What rating did he have? A. He was an oiler.

Q. Now, did you at any time during the 1944 season have any conversations with Sims relating to the election or to the Union or to Union matters? A. I recall one time in Lorain, he told me that I'd be out of a job after the war because when things got slack, if the Union won, they were going to prohibit licensed men from occupying unlicensed positions.

Q. When Mr. Sims made that statement to you, what, if anything, did you say in reply? A. As I recall, I just—I said, that's what you think.

Q. Was there any further conversation along that line? A. No, there wasn't.

Q. Now, where was the vessel at that time? A. On the dry dock in Lorain.

Q. Were you and Sims on the vessel, or were you on the dry dock, or where were you? A. Aboard the vessel.

Q. Do you recall whether or not anyone else was present at the time that conversation took place? A. No, I don't.

Q. Now, Mr. Brown, did you, six or seven times a day, throughout the navigation season, while Sims was on the vessel, stick your head into the oiler's room and say:

"You are going to cover the water front. When the Union wins, you are going to be the delegate. You are going to police the beach."

Did you make such statements? A. No. That is untrue.

Q. Did you make any such statements to Sims either in or out of the oilers' room? A. As I said before, the altercation was there in Lorain.

Q. You say "altercation." What do you mean by altercation? A. Well, that conversation.

Q. Did it develop into an altercation? Do you know what an altercation is? A. Well, just a couple of retorts, that's all.

Q. Now, what were your duties on the vessel, Mr. Brown? A. Second Mate of the vessel; they were, piloting the ship from ten until two.

Q. And that was ten until two in the morning—ten to 2:00 p.m., and 10:00 to 2:00 a.m., is that right? A. Yes, that's right.

Q. Now, what other duties did you have besides piloting the vessel? A. Of course, when not on the dock, I'd be down on deck.

Q. Now, would you have any reason at all, in the performance of your duties, to go into the oilers' room? A. Well, I have the occasions to get the data from the seamen's papers for the records of the Coastguard; that is, the personnel on the ship that wasn't discharged before a shipping commissioner.

Q. Well, how many times do you suppose you would go to the engine room in the performance of those duties? A. When we ship the new men, if the engineer didn't pick up his discharge book, why, I'd go get it myself; that is,

I'd take the data from him for the Coastguard record as to personnel on the ship discharged without a commissioner.

Mr. Ray: You may cross examine.

Trial Examiner Leff: Let's take a five minute recess.

(A recess was had.)

Trial Examiner Leff: The hearing is in order.

Mr. Ray: Mr. Belkin, I have one or two more questions.

Mr. Belkin: Surely, go right ahead.

DIRECT EXAMINATION (Continued).

Q. (By Mr. Ray): Mr. Brown, I show you what has been received in evidence as Board's Exhibit 4, and ask you to inspect that Exhibit. A. I think I have seen that before.

Q. Do you recall having seen that document on board the Steamer Horace Johnson? A. Yes, I do.

Q. Now, how did that speech of Congressman Bradley come aboard, do you recall? A. It came aboard in individual envelopes.

Q. Addressed to whom? A. Well, as I recall, it was addressed to different watches like maybe 10:00 to 2:00 wheelsman or 4:00 to 8:00 fireman.

Q. Now, how was that document distributed on the vessel, do you recall? A. Well, the general practice is that when we get mail on board, the mate on watch sorts it and passes it on to the deck watch for distribution. That is, mail for aft.

Q. Mr. Sims has testified that you handed a copy of Congressman Bradley's speech to him in the form in which you now see it while Sims was in his room. Did you or did you not? A. I did not.

Mr. Ray: You may cross examine.

CROSS EXAMINATION.

Q. (By Mr. Belkin): While we are on the matter of this Bradley letter, Mr. Brown, did you at any time ever distribute any mail to the unlicensed personnel on your ship? A. Well, no. I sort the mail, that is, for the different departments and then it is passed on to the deck watch and distributed.

Q. Distributed by him? A. Yes, sir. That is, mail for aft.

Q. Wasn't there any time when you, yourself, distributed some of this mail, Mr. Brown, instead of a deck watch? A. No, there wasn't.

Q. To your knowledge, have any of the other mates distributed any mail aboard the ship? A. No, I don't.

Q. On the Hatfield, now, do you do the same job on mail; that is, sort it out and then let the deck watch distribute it? A. Yes, that's right.

Q. And you, yourself, never distributed any mail at all aboard the Hatfield? A. No. I just put it in the box. That is, forward mail. Then the deck watch takes the aft mail aft.

Q. This letter was distributed to the crew, wasn't it? A. Yes.

Q. In 1944. I should say, the letter including Congressman Bradley's speech, is that right? A. Yes, that's right.

Q. And do you recall when it came aboard your ship? A. No, I don't recall the exact date.

Q. Was it before or after the election? By that I mean the National Labor Relations Board Election. A. It was before the election.

Q. Did you see what has been marked Board's Exhibit 3 while you were on board the ship last year? A. Yes.

Q. And how was that distributed aboard the ship? A. Why, that was posted on the bulletin board, I believe.

Q. Did you post it yourself? A. No, I didn't.

Q. Who did? A. That I don't know. It was posted by one of the other officers, or maybe posted by the master, himself.

Q. Either by the master or one of the other officers, is that right? A. Yes.

Q. Now, Board's Exhibit 2 is what I am showing you now, Mr. Brown. Did you see that aboard your vessel last spring, in the spring of '44? A. Yes, I saw that.

Q. Do you recall when you saw it, Mr. Brown? Approximately, to the best of your recollection? A. Sometime during the month of May, I believe.

Q. And how was that distributed aboard your ship? A. Well, as I remember, each person got a copy of that.

Q. Did these copies of Board's Exhibit 2 come aboard your ship in a bundle, all rolled together, or did they each come in a separate envelope? A. Well, I am not certain whether they came individually or in bunches.

Q. You had charge of their distribution, did you not, Mr. Brown? A. No, I didn't.

Q. Well, you generally handled the mail, though, didn't you? A. If I am on watch. That is just in the hours 10:00 to 2:00.

Q. It might have been some other mate, is that right? A. That is right.

Q. Would you know just how it got to the members of the crew? By that I mean was it put on their bunks, given to them individually, or just how was it done? A. That I don't know because I don't recall how that was distributed. It may have been in individual envelopes, and then, it might have been as you say in a bunch.

Q. But each member of the crew got a copy? A. Yes.

Q. This is Board's Exhibit 7. Did that come aboard your ship in the spring of 1944, Mr. Brown? A. Yes, I saw that.

Q. And how did that get aboard the ship? A. It came aboard in individual envelopes addressed to different crew members; that is, in relation to their watch.

Q. Did you distribute these copies when they came aboard? A. No, I don't distribute any mail. All I do is sort it.

Q. You sorted these copies and asked the deck watch to distribute it? A. That's right.

Q. I didn't get your answer. Was that yes? A. Yes.

Q. Thank you. Now, in this discussion you had with Mr. Sims in the dry dock in Lorain, you testified Mr. Sims said to you you'd be out of a job if the Union won. Wasn't that a pretty mean statement to make, in your opinion? A. Well, he said—what he meant was in slack times when we weren't operating all the ships.

Q. It was rather an unusual statement for an unlicensed person or member of your crew to make to an officer, wasn't it? A. Well, it was. I didn't take much—

Q. Had you said anything to Mr. Sims to get him riled up before he made this statement? A. No.

Q. Whether intentional or not? A. No, I hadn't.

Q. You mean that this conversation began with Mr. Sims making this kind of a statement to you? A. Yes.

Q. It came out of a clear sky, with no previous conversation at all? A. Well, as I recall, that was the gist of it, anyway, I'd say.

Q. Now, you seem to be a man with a sense of humor, Mr. Brown. Tell us, had you been teasing Mr. Sims about anything before he started to say this to you? A. Well, might have been a kidding retort that didn't amount to anything.

Q. I see. You just were kidding him along, would you say? A. Might call it that.

Q. What were you saying when you were kidding Mr. Sims, Mr. Brown? A. Oh, I might just say hello and pass the time of day, an occasional—I would do that to most anyone that would speak to you, speak to them.

Q. Did you know that Sims was a Union organizer? A. Yes—well, I didn't know for sure. He may not have been, for that matter, but—

Q. Well, why did you have any idea at all that he might be the Union organizer, Mr. Brown? A. Well, fellows seemed to congregate there, mostly. I thought perhaps—

Q. Perhaps what? A. He might be a delegate, although I didn't know, wasn't certain.

Q. You said congregate there. Where was that? A. In the oilers' room.

Q. And you saw men congregate in the oilers' room around Sims from time to time, aboard the vessel, is that right? A. That's right.

Q. Did you hear what they were discussing? A. No; I didn't.

Q. From the fact they were congregating with Sims and an election was pending you assumed he might be the Union organizer, is that right? A. Yes.

Q. Did you ever see him distribute any union literature aboard the ship? A. No, I didn't.

Q. Did he ever give you a copy of the Pilot? A. No, not as I remember.

Q. You don't deny that he might have done that? A. I read the Pilot occasionally, when I see it laying about.

Q. Yes. But I am asking you, you are not quite certain about this, and I'd like to get your best recollection of it. Did Sims ever give you a copy of the Pilot? A. No.

Q. You are sure of that? A. Yes, I am sure.

Q. Did any other member of the crew give you a copy of the Pilot? A. No, I don't remember of getting any from the crew.

Q. How did you get to read a copy? A. I just see one in the windlass room or on the deck; I see it there and pick it up and read it.

Q. Now, you testified that you didn't say anything like the statements ascribed to you by Mr. Sims, when Mr. Ray read them off to you, such statements as "You are going to police the beach" and so forth? A. Yes, that's right.

Q. That was your testimony. Now, I gathered from the way you testified that while you didn't say these words, you might have said something like them. Is that true? A. No, it isn't true.

Q. Just what did you say to Sims? A. Well, just maybe an occasional hello, if I met him. After all I didn't have anything against the man.

Q. Have you completed your answer? A. Yes.

Q. And at no time did you ever kid Sims about the Union or any occupation that he might have with the Union, is that right, Mr. Brown? A. Yes.

Q. Did you ever discuss rotary shipping with him? A. Just that one time that I told you when we—well, it really wasn't rotary shipping, either.

Q. What were you discussing when the matter came up? A. Well, we'en't discussing anything outside of what I told you before.

Q. Did you ever discuss the Union with anybody aboard the ship besides Mr. Sims? A. No.

Q. Did you ever hear of the men discussing the Union anywhere in the ship? A. No.

Q. Did you ever discuss the question of the election with the Captain? A. Yes.

Q. What was the name of the Captain aboard your ship? A. Captain Wallace.

Q. When did you have discussion with him on that matter? A. That was sometime before the election.

Q. Did Captain Wallace at that time tell you that Sims was an organizer? A. No.

Q. How long before the election was this conversation with Captain Wallace? A. Probably a month.

Q. So it would be sometime in May? A. Yes.

Q. Did Captain Wallace ask you if you knew who was the Union organizer aboard the ship? A. No, he didn't.

Q. You testified you had a hunch or some kind of opinion that Sims might be the Union organizer. Did you convey that opinion to the Captain? A. No, I didn't.

Q. Isn't it your custom, as a Mate, or should I say, isn't it your duty as a Mate to report matters like that to the Captain? A. No, it isn't.

Q. Don't you report personnel problems to the Captain? A. No, I don't—well, unless there has been a fight, something of that sort.

Q. But if there was a Union election coming aboard the ship, you wouldn't discuss that with the Captain under any circumstances, is that right, Mr. Brown? A. Well, no; I didn't discuss—I am not required to.

Q. Well, I know you may not be required to. But did you? A. Yes, we did talk of the coming election, that it was coming.

Q. Did the Captain at any time ask you how the men were reacting to the pleas of the Union to join up? A. No, he didn't.

Q. Did he ask you how you thought or felt that they might vote in the coming election? A. No.

Q. Did you ever have a discussion on that subject with any other officer besides the Captain? A. No.

Q. You never talked it over with the First Mate or the Third Mate? A. No.

Q. Did the Third Mate know there was an election coming aboard the ship, to your knowledge? A. Yes, he must have known.

Q. And the First Mate knew the same? A. Yes.

Q. But you never discussed it with them? A. No.

Mr. Belkin: That is all.

RE-DIRECT EXAMINATION.

Q. (By Mr. Ray): Mr. Brown, is the oiler under your jurisdiction, or subject to your discipline at all, as Second Mate? A. No, he isn't.

Mr. Ray: That is all.
Mr. Belkin: I have no further questions.
Trial Examiner Leff: The witness is excused.
(Witness excused.)

Mr. Ray: I will ask Miss Cruikshank to take the witness stand.

NORMA G. CRUIKSHANK, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Trial Examiner Leff: What is your full name?
The Witness: Norma G. Cruikshank.
Trial Examiner Leff: And your address?
The Witness: 3008 Albion, A-l-b-i-o-n Road.
Trial Examiner Leff: Cleveland?
The Witness: Cleveland.

Q. (By Mr. Ray): By whom are you employed, Miss Cruikshank? A. Pittsburgh Steamship Company.

Q. How long have you been employed by that Company? A. About 27 years.

Q. In what capacity are you employed? A. I now have charge of the files and mail room.

Q. How long have you been in charge of the files and mail room? A. Approximately six and one half years.

Q. Miss Cruikshank, at my request did you search the files of the Pittsburgh Steamship Company to ascertain what if any communications had been sent by the Steamship Company to the vessels of the Pittsburgh fleet relating to labor matters to the National Maritime Union, and to the election, during the years of 1944 and 1945? A. I did.

Q. And do you now have in your possession the communications which were so sent? A. Yes, I do.

Q. Will you kindly produce them.

Mr. Ray: As I recall, the Trial Examiner requested that these communications be produced and submitted to the Trial Examiner. And as counsel for the Respondent, I now submit them to the Examiner.

Trial Examiner Leff: Let the record show that I have handed the documents to Mr. Belkin.

Do you propose to offer them in evidence?

Mr. Ray: No. I am simply producing them in compliance with your request, Mr. Examiner.

Mr. Belkin: Well, they should be offered in evidence.

Trial Examiner Leff: Yes, it seems to me, to make the witness's testimony more understandable.

Mr. Ray: Well, I have no objection to offering them in evidence.

Mr. Belkin: I have no objection to their being admitted.

Trial Examiner Leff: Will you please have them marked for identification, first.

Mr. Ray: Off the record.

Trial Examiner Leff: Off the record.

(Discussion off the record.)

Trial Examiner Leff: On the record.

(Thereupon, the documents above referred to were marked Respondent's Exhibits 3, 4, 5, 6 and 7 for identification.)

Trial Examiner Leff: The Respondent has had marked for identification Respondent's Exhibit 3, a communication dated May 6, 1944, addressed to Masters and Chief Engineers. As Respondent's Exhibit 4, a communication from the Respondent dated May 31, 1944, headed "Circular Letter to Masters." As Respondent's Exhibit 5, a communication dated May 31, 1944, on the Respondent's stationery, entitled "Circular Letter to Masters." As Respondent's Exhibit 6, a communication on Respondent's letter head addressed to masters and chief engineers, to which is attached a communication dated June 1, 1944, directed to all unlicensed employees. And as Respondent's Exhibit 7, a communication dated May 2, 1944, to masters and chief engineers, to which is attached another communication dated May 2, 1944, addressed to all unlicensed employees.

Respondent's Exhibits 3, 4, 5, 6 and 7, heretofore marked for identification, having been offered in evidence, will now be received.

(The documents heretofore marked Respondent's Exhibits 3, 4, 5, 6 and 7 for identification were received in evidence.)

Q. (By Mr. Ray): Miss Cruikshank, as head of the mailing department of the Pittsburgh Steamship Company, state whether or not each communication which goes from the Pittsburgh Steamship Company to the vessels of the fleet goes over your desk? A. Yes, sir.

Q. It is fair to say, then, that you have personal knowledge of each communication? A. Yes.

Q. I show you Board's Exhibit 4 and ask you to examine that Exhibit.

Have you examined it? A. Yes.

Q. Was that Exhibit, which on its face indicates that it is a speech of Congressman Fred Bradley, of Michigan, in the House of Representatives on May 19, 1944, sent by you to the vessels of your fleet, or any of the personnel thereof? A. It was not.

Q. I show you what has been received in evidence as Board's Exhibit 7, and I will ask you to examine that Exhibit.

Have you examined that Exhibit? A. Yes, sir.

Q. Was that Exhibit, which is identified on its face as "The NMU Fights Jim Crow" sent by you or any of your assistants to the vessels of the Pittsburgh Steamship Company fleet or any of the personnel thereon? A. No, it was not.

Mr. Ray: You may cross examine.

Cross Examination.

Q. (By Mr. Belkin): Miss Cruikshank, did you, yourself, or any of your assistants type any of these letters or mimeograph them? A. No, no, they didn't.

Q. How did they get to you for filing? A. They are run off down in our stock room. Mr. Stone has charge of that department. All stencils are taken to him, first, and then down to the stock room to be run off, and then they are brought back up to him, and he sends them to me.

Q. In other words, you just get the mimeographed material, is that right? A. No, no, that's not right.

Q. Do you get personal correspondence, too? A. We get any—well, for instance, anything on food rationing bulletins, those are sent out from my office.

Q. Now, would you get a personal letter, for example, from Mr. Ferbert to Captain Wallace? A. A personal letter?

Q. Well, a letter which deals with a matter concerning which Mr. Ferbert would feel that only Mr. Wallace and he were interested? Would you get such a letter? A. Well, no, no personal mail. The mail would come into my room, but I would not read it.

Trial Examiner Leff: Well, I don't know whether the witness understands what Mr. Belkin means by personal mail. As I understand Mr. Belkin, he means a letter pertaining to the business of the fleet, but directed to Mr. Wallace, and not directed to all masters.

Would such a letter come over your desk?

The Witness: It would come into my department, yes, for mailing.

Trial Examiner Leff: And would the copy be filed?

The Witness: Well, I suppose it would.

Trial Examiner Leff: Where?

The Witness: It would be in the filing department.

Trial Examiner Leff: Well, how are letters filed?

The Witness: Well, by subject.

Trial Examiner Leff: And you say you examined the files of the Company to get the information that Mr. Ray requested. What files did you examine?

The Witness: The files in my department. That's all the files I have.

Trial Examiner Leff: By subject?

The Witness: Yes.

Trial Examiner Leff: And what subject did you look up?

The Witness: Well, relating to National Labor.

Q. (By Mr. Belkin): Did you examine any other headings except National Labor? A. Maritime Union.

Q. Did you examine the files of the Maritime Union? A. Yes.

Q. Now, did you examine any other files in addition to these? A. Our circular letter file.

Q. And what other file? A. That was all, because that would be all the subjects that I would know.

Q. One of the captains employed by your Company has testified that he received a letter from the president, Mr. Ferbert, instructing him to be neutral in the election. Did you find such a letter? A. No, sir, I wouldn't know anything about that.

Q. Is there a file or a heading in your files for each captain of the fleet? A. Yes.

Q. Did you examine those files? A. No.

Q. Now, is it possible that there might be a letter concerning this election which was held in June of 1944 in the files of some of the captains of the fleet, Miss Cruikshank? A. I don't know. I suppose it would be possible.

Q. And to your knowledge at this time, you don't know whether or not there is such a letter? A. No, sir.

Q. You haven't examined that file at all? A. No, sir.

Mr. Ray: If Mr. Belkin has any captain in mind, we will be glad to have Miss Cruikshank check the captain's file.

Mr. Belkin: How many captains are there; 70 odd?

Mr. Ray: 72 at that time.

Mr. Belkin: I am not certain whether that is necessary. Now, I'd like to examine Miss Cruikshank a little further.

Q. (By Mr. Belkin): Miss Cruikshank, if a letter from President Ferbert went to Captain Wallace, for example, discussing some member of his crew, would that letter be filed by you? A. I couldn't say for sure. It would if the copies were put in file; I would file them.

Q. But if they weren't put in the file, you wouldn't get them? A. No, sir.

Q. So, then, if Mr. Ferbert has a letter he wishes to address to one captain or to several captains he might not send them to you for filing, or he might not instruct his secretary to send them to you for filing, isn't that true? A. That's right.

Q. Does the Company maintain any offices in cities other than Cleveland, Miss Cruikshank? A. Chicago and Duluth.

Q. And do they have stenographic and clerical help at these offices? A. Yes.

Q. And do they do any mailing out of these offices? A. Yes.

Q. Now, do you know whether or not the Chicago or Duluth offices mailed Board's Exhibit 7 or Board's Exhibit 4 out? A. I wouldn't know.

Q. But they might have done so? A. I doubt very much, because they wouldn't have Mr. Ferbert's—

Q. Well, you must examine Board's— A. Mr. Ferbert would authorize anything like that that was to be sent out to the boats.

Q. But to your knowledge you don't know whether they did or not? A. No, I don't.

Q. They might have? A. They might have, as I say.

Q. Board's Exhibit 7 and Board's Exhibit 4 don't bear Mr. Ferbert's signature, do they? A. These—no.

Q. No. A. Not that I know of. No.

Q. Do you, as the person in charge of this filing and mailing room, mail all circulars? A. Yes, sir.

Q. To the personnel of the fleet that are given to you for mailing? A. Yes, sir.

Q. Now, when you mailed this circular letter, Respondent's Exhibit 5, just how was that sent to a ship? And by that I mean, was it sent in a bundle or individually? A. No, I received enough circulars, one for each master and a set of envelopes, one for each master, and one is enclosed in each envelope and they are sealed and then sent to our traffic department to be stamped for location.

Q. And is there a separate envelope for each seaman aboard the Company's ships, or are— A. Separate envelope?

Q. —or are a stack of circulars, sufficient for, let us say, 36 persons, sent in one envelope to one ship? Do you follow me, Miss Cruikshank? A. No, I don't, because this is just for masters. This is just sent to masters, if you are referring to this letter (indicating).

Q. I see. Well, let's take one that was sent to everyone. Here is Respondent's Exhibit 6 which is addressed to all unlicensed employees. Will you tell us how that went out? A. This one was sent—I don't know just how many went, but there were enough for each unlicensed man, forward end, sent to the master, and enough for each unlicensed man on the after end sent to the chief engineer.

Q. They were all sent in one bunch? A. I don't know just how they take care of them. They were all sent in one envelope, yes, sir.

Q. There is some statement in Respondent's Exhibit 5 that you had received complaints that literature of the Unions involved was being thrown overboard by the captains or other officers at the Soo. Were you familiar with that complaint? A. No.

Trial Examiner Leff: What Exhibit were you referring to?

Mr. Belkin: Respondent's Exhibit 5.

Trial Examiner Leff: Let me see that, please.

I notice from this letter, that the Sailor's International Union was a party to the election. Is that correct?

Mr. Belkin: Yes, it was.

Trial Examiner Leff: I propose to take judicial notice of the "R" case proceedings involving that 1944 election, just so that I will know who the parties were and when the Petition was filed and when the election was ordered and what the results of the election were. So that, if you have any objections to raise or want to introduce any further testimony on that, you are at liberty to do so.

Mr. Belkin: Well, if you wish—well, since you are taking judicial notice and I hear no objection—

Trial Examiner Leff: Just from the papers in the file of the Board in the Representation Case.

Mr. Belkin: Yes. I take it there is no objection so it will be all right or if you want us to join in the stipulation I would, or else offer that formal file.

Mr. Ray: Well, if the Trial Examiner takes judicial notice, that is the simplest way.

Trial Examiner Leff: Yes.

Mr. Belkin: Yes. I have no further questions to ask the witness.

RE-DIRECT EXAMINATION.

Q. (By Mr. Ray): Miss Cruikshank, are all circular letters sent out by the Pittsburgh Steamship Company to its fleet sent through your office? A. Yes, sir.

Q. So that the office at Chicago and the office at Duluth would not send out any circular letters? A. No circulars, no, sir.

Mr. Ray: No further questions, Mr. Examiner, at this time.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Mr. Ray: At this time, Mr. Trial Examiner, I would like to, or, I mean, I do request the Board, and the Union

through the Board, to produce all letters sent by Mr. Jack Lawrenson, Vice-President of the National Maritime Union, to the masters of the Pittsburgh fleet during the years 1944 and 1945.

Mr. Belkin: I object to that as being incompetent, irrelevant and immaterial in this case. The Union is not on trial for the—

Mr. Ray: We asked for it and they agreed to produce it in Duluth, as I recall.

Trial Examiner Leff: I don't recall it. Letters addressed by Lawrenson to the masters, you say?

I know you asked for Mr. Lawrenson for further cross examination, and then I do recall—

Mr. Belkin: He is in the hearing room today.

Mr. Hinslea: There was some testimony on cross examination by masters of having received letters from Mr. Lawrenson relative to the election and how to act. And we asked at that time if the Board would produce those letters so we could see what they are talking about, and the Board agreed to it.

Mr. Belkin: I don't recall agreeing to do that, but maybe I did.

Mr. Ray: Well, we renew our request now.

Mr. Belkin: It seems to me, in the first place, I can't see how any such letters would add to this record. In the second place, if these letters were in the possession of the captains of the Company and in the Respondent's possession, surely they ought to be able to produce them.

However, if the Trial Examiner feels they are pertinent, if they can be obtained, I might make an effort to do so. But where would it get us?

Trial Examiner Leff: I don't, offhand, see any materiality to it. Why don't you, when you examine Mr. Lawrenson, examine him on the point, and possibly establish that it is material and then we can pass on the question and you may apply for a subpoena. And if you can satisfy me that it has some materiality to the issues, I will be glad to issue a subpoena. On the face of it, though, I just don't see any materiality. But you are free to point out to me if you can.

Mr. Hinslea: I'd have to go through the testimony, but there was quite a point of it made by Mr. Belkin and we

said the letters would speak for themselves and they ought to be produced.

Mr. Belkin: I don't recall attempting to make a point on that. I wish you'd enlighten me. If I did—excuse me—

Mr. Hinslea: A lot of points were made, so I would excuse you if you didn't remember.

Trial Examiner Leff: Perhaps you better locate it in the record and point it out to Mr. Belkin in the afternoon.

Mr. Belkin: If I made a promise I will stand good on it.

Mr. Hinslea: I don't think it was a promise. Either you agreed to it or we made a point the letters should speak for themselves and ought to be produced.

Mr. Ray: This is off the record.

Trial Examiner Leff: Off the record.

(Discussion had off the record.)

Trial Examiner Leff: On the record.

WILLIAM C. GARBUTT, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Trial Examiner Leff: What is your full name?

The Witness: William C. Garbutt, G-a-r-b-u-t-t.

Trial Examiner Leff: What is your address?

The Witness: 12039 Edgewater Drive, Lakewood.

Q. (By Mr. Ray): By whom are you employed, Mr. Garbutt? A. Pittsburgh Steamship Company.

Q. How long have you been employed by that Company? A. 35 years.

Q. In what capacity are you employed? A. Manager of Industrial Relations.

Q. How long have you been Manager of Industrial Relations? A. Two years.

Q. And what departments are under your supervision as Manager of Industrial Relations? A. Casualty, personal injuries, personnel.

Q. Now, during the spring of 1944, how many vessels did the Pittsburgh Steamship Company have? A. 73 steamboats and two barges.

Q. And how many licensed officers were in the employ of the Pittsburgh Steamship Company as of that time? A. 596.

Q. Now, do you have, as one of your employees, a man by the name of John Zyp? A. I do.

Q. How long has Mr. Zyp been employed by the Pittsburgh Steamship Company? A. Oh, I would guess 20 years.

Q. What if any title does Mr. Zyp have? A. None.

Q. What, in general, are his duties? A. He receives applications for positions on the vessels and recommends men to the masters and chief engineers.

Mr. Belkin: I didn't get the last of that. He recommends men—

The Witness: He recommends applications to masters and chief engineers.

Q. Does he actually employ men in the sense that they become employees when he gives the word? A. He has no power of hiring or firing.

Q. Does he have any authority, acting under your direction, to fire a man or to make any recommendations to chief engineers or captains or Mates or assistant engineers? A. None whatsoever.

Q. Now, Mr. Garbutt, during the spring of 1944, state whether or not the Pittsburgh Steamship Company had a meeting in which the chief engineers and the masters of your Company were present? A. Normally, we have a meeting every spring before the boats start to sail. In 1944 we had our meeting at the Hollenden Hotel. My recollection is March 28 and 29.

Q. Were you present at that meeting? A. All the time.

Q. What subjects, generally, were discussed by the officers of the Pittsburgh Steamship Company at that meeting? A. The meeting is held for the purpose of discussing the experience of the previous year and the prospects for the coming year in all departments.

Q. What subjects, generally, were discussed? A. Generally speaking, the discussion is on the prospects in regard to the number of boats that will be in operation and the probable length of time of operation, general labor

conditions, that is, the supply of men, insufficient supply, the wages, and everything pertaining to the business.

Q. Now, during that meeting held in the Hollenden Hotel on March 28 and 29, 1944, did any of the officers of your Company make any statement or statements to the men assembled there relative to the coming election and to the attitude of the Company with respect to the election and to the Union? A. Yes.

Q. What, if anything, was said, and by whom? A. Mr. Ferbert announced that there would in all probability be an election by a union, or one or more unions, that it would be held in June, that the officers were to be strictly impartial. They were not to interfere with any activities so long as those activities did not interfere with the proper operation and discipline on the vessels.

Q. Now, Mr. Garbutt, is your testimony that you have just given relative to what Mr. Ferbert said at that meeting based upon your recollection alone or is it based on anything else? A. It is based upon my recollection.

Q Have you refreshed your recollection by looking at any documents? A. I have examined the minutes of that meeting.

Q. Now, was a similar meeting held during the non-navigation season of 1945? A. Not in the same manner. Because of the O.P.A. regulations we could not gather the crowd together in one place. So we had three meetings, one in Milwaukee, one in Toledo, one in Cleveland. Attendance at those meetings was just the men from those vicinities.

Q. Which of any of those meetings in 1945 did you attend? A. All of them.

Q. Now, during any of those meetings, did any officer of the Pittsburgh Steamship Company make any statement relative to the Union or any union or labor matters, generally? A. No. No specific mention was made of any union in regard to a probability of an election. The only mention of labor was shortage of men.

Q. Was there any statement made relative to what attitude the officers should take toward any union activity that may or may not have taken place on your vessel? A. My recollection is that at one meeting—and which one I wouldn't testify—Mr. Ferbert said that in the event that

there was any activity, his instructions of the previous year still held. There was to be strict impartiality, no interference whatsoever, so long as it didn't interfere with the proper operation of the boat.

Mr. Ray: You may cross examine.

CROSS EXAMINATION.

Q. (By Mr. Belkin): Mr. Garbutt, were you familiar with the Ferbert letters which went to the personnel of the fleet in the spring of 1944, and which we have here marked as Board's Exhibits 2 and 3? A. I received a copy of these letters, as I do all circular letters that go out regardless of over whose signature.

Q. Did you, as the manager of industrial relations, have anything to do with the framing of these letters? A. None whatsoever.

Q. Were you consulted about them? A. I was not.

Q. At no time? A. At no time.

Q. You were, however, familiar with all correspondence on labor matters that went out from Company offices to the personnel of the fleet? A. That's right.

Q. Now, did a letter go out, at any time, to the personnel of the fleet in which there was statement that the officers should be impartial? A. No, sir.

Mr. Ray: Should be what?

Mr. Belkin: Impartial.

Q. Now, you have testified, Mr. Garbutt, that a statement was made by Mr. Ferbert at a spring meeting of the masters and chief engineers at the Hotel Hollenden in 1944, and that Mr. Ferbert at that time told these men to be impartial, is that correct? A. He used those words.

Q. Was the statement of Mr. Ferbert at that time published in any form so that the unlicensed personnel of the fleet would know about it? A. Not to my knowledge. The minutes of the meetings are sent to all the captains and chief engineers. If they show them to the unlicensed men, I would not know that.

Q. But there wasn't any public announcement of that policy? A. No, none whatsoever.

Q. Was any announcement of this policy made in the newspapers? A. There was no mention of our meeting in

the newspapers other than the simple mention in the Marine column, that a meeting had been held or was to be held. I don't remember which.

Q. And did you or any other official of the Company communicate with either the SIU or the NMU and inform them of Mr. Ferbert's statement? A. Not to my knowledge.

Q. Did it come to your knowledge at any time in 1944 that any of the captains or other officers of your ships had not been impartial? A. No.

Q. In this matter? A. It did not.

Q. When were you first notified, Mr. Garbutt, that an unfair labor practice charge had been made against your Company? A. In the winter of 1944-45.

Q. At that time—strike that. Did you at any time in the spring of 1944 check with any of the vessels to see whether or not Mr. Ferbert's statement was being carried into effect? A. I did not.

Q. I mean his statement that they were to be impartial? A. I did not.

Q. Did any of the officers of the Company check to see whether this was being carried into effect? A. Not to my knowledge.

Q. There has been some testimony that John Zyp visited vessels of the fleet during 1944. Is that part of his duties? A. He does it all the time.

Q. When he visits a vessel, he does one of two things, as I understand from your testimony. Either he recommends that a certain applicant be hired or fired, is that right? A. No, sir.

Q. You made this statement: Mr. John Zyp—or, you mentioned something before this which I don't recall. But you went on to say this: "Mr. John Zyp recommends the applicants to masters."

Is that correct? A. During the winter time John receives many letters asking for positions with the Company. During the season he receives wires from the captain that he will need an oiler or fireman or coal passer, as the case may be. In many instances, in recruiting that man he will take him to the vessel during the sailing season.

Q. And, therefore, in a sense he sifts out the applications and applicants, selecting those that he thinks are best

qualified? A. I will not subscribe to the sifting, except in so far as experience goes. In other words, if he has two applications and one man is already certificated, that would be the man he would recommend.

Q. Suppose a certificated man, in his opinion, was not as good a worker as the fellow without a certificate? What would he do? A. He wouldn't necessarily have knowledge of the man's ability.

Q. But let us suppose that he did. What would his duty be then? A. He has no instructions in that respect.

Q. And he is free to use his own judgment. A. He doesn't have too generous a supply to use much judgment.

Trial Examiner Leff: He doesn't have what?

The Witness: He hasn't had too much of a supply in the last several years.

Mr. Ray: Supply of men, he means.

The Witness: Supply of men.

Trial Examiner Leff: I see. You mean, in the industry you have been—

The Witness: Short of men.

Trial Examiner Leff: Were you prepared to put up with more from your men than you ordinarily would because of the shortage?

The Witness: We have had one-eyed and one-legged men.

Q. (By Mr. Belkin): Now, on this one subject of whether or not he would have a supply of judgment, generous or not, to use—

Mr. Ray: No, you are misquoting him. Supply of men, he said.

Mr. Belkin: Oh, I see. I am sorry.

Q. Now, in the period before the war when labor was plentiful, did Mr. Zyp have the same duties that he has now? A. No, he didn't. At that time he was assistant to the fleet captain.

Q. Now that the war is over, has Mr. Zyp's duties changed in any way? A. Not yet.

Q. Has your labor supply increased? A. There are no indications to that effect yet.

Q. When Mr. Zyp brought an applicant to a master, almost without exception this applicant was hired, isn't

that true? A. He would have nothing to do with whether he were or were not.

Q. So I understand from your testimony. But in response to my question, what is the answer. A. In recent years the master would take a man provided he had the necessary qualifications.

Q. So that my statement is, in the main, correct; namely, that when Mr. Zyp brought an applicant to a ship, in practically every case he was hired? A. In most cases. The taking of a man to a ship is purely a matter of expediency. The vessel is only going to be there a matter of a short while, and Mr. Zyp has transportation to take the man to the vessel.

Q. You knew, did you not, Mr. Garbutt, that the unlicensed personnel of your fleet regarded Mr. Zyp as a person who was hiring them? A. No. Definitely no.

Q. Did you ever issue instructions to the fleet that Mr. Zyp was not the hiring officer? A. It is very generally known in our fleet that he is not the hiring officer. We do not have a hiring officer. Our captains and chief engineers are free to hire whom they like.

Trial Examiner Leff: Does Zyp run the employment office in your Company?

The Witness: In effect, yes.

Q. We have had several of your licensed personnel testify at this hearing, Mr. Garbutt, that Mr. Zyp was the hiring officer of the Company, that he hired men. A. It is a misstatement.

Q. Yet you say it is generally known through the fleet that he is not the hiring officer? A. That is right.

Q. Now, I'd like to ask one more question on this issue. When Mr. Zyp has come to a vessel with some statement that a certain individual shall be fired, regardless of who has issued that statement, that individual is generally fired, isn't that so?

Mr. Ray: Well, now, I object.

Trial Examiner Leff: Will you read that question?

Mr. Belkin: I will strike it. I will withdraw it and I will rephrase it.

Trial Examiner Leff: All right.

Q. Does Mr. Zyp at any time go to a vessel and state to the captain that his mission there is to see that someone is discharged? A. Definitely no.

Q. You have never given him that assignment? A. Absolutely no.

Q. When you want to fire a man, just how do you do it? A. We don't fire any man from the office. The master or the chief engineer does all his firing and all his hiring.

Q. Suppose you were to find out that a certain individual was an escaped convict and he was working aboard your vessel. Wouldn't you communicate that communication to the captain and ask that that man be fired? A. We have had many such communications from the F.B.I. and the F.B.I. handle it themselves.

Q. Well, let's not make it as dramatic as that. Let's say that here is an individual that is guilty of some sort of misconduct so as to make him not criminally liable but certainly not safe or trustworthy employee of your Company. Did you ever communicate that information to a master and say, "We'd better let this man go"? A. Not with any thought that he let him go. We might communicate with him that he has a convict or a man who has served time, which information we received from government authorities. We pass it on to the master and leave the rest of it to his judgment.

Q. And isn't it true that Mr. Zyp conveys that information to the masters? A. No, sir.

Q. Now, in the spring of 1944 you testified—from my notes—that at this meeting at the Hollenden there was an insufficient supply of labor and that was outlined to the masters and chiefs? A. That's right.

Q. What was your labor supply setup in that year, in the spring of that year? A. Roughly, I'd say about ten percent shortage.

Q. And that was true in both the forward and the after crew? A. Yes. It was not subdivided.

Q. So that you were compelled to take practically anyone who can do some work aboard ship? A. We had materially reduced our medical requirements.

Q. Did you find it easy or difficult to get A.B.'s at that time? A. I wouldn't say there was any more difficulty in getting A.B.'s than any other rating.

Q. But the picture was about the same. You were ten percent short in that, I take it? A. We were the same as any other industry. The Selective Service had made inroads in our men, which materially reduced the number.

Mr. Belkin: That is all.

Mr. Ray: No further questions.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: Do you have any further witnesses available, now, Mr. Ray?

Mr. Ray: Not available now, they will be here after we come back from lunch.

Trial Examiner Leff: Off the record.

(Discussion had off the record.)

Trial Examiner Leff: On the record.

We will recess the hearing until 2:00 p.m.

(Thereupon, a recess was taken until 2:00 o'clock, p.m.)

AFTER RECESS.

(Thereupon, at 2:00 o'clock, p.m., the hearing was resumed, pursuant to adjournment.)

Trial Examiner Leff: The hearing is in order.

Mr. Ray: Mr. Trial Examiner, in connection with Captain Wallace, I requested Mr. Garbutt to call Chicago and talk to the doctor to ascertain whether or not Captain Wallace's physical condition was such that he could appear as a witness. The doctor advised Mr. Garbutt that such a situation would be inadvisable; that he should not be subjected to any excitement at all.

For that reason, we would not press our application to take Captain Wallace's testimony, either by deposition or before you, in Chicago.

Trial Examiner Leff: I wasn't aware that any such application had been made yet.

Mr. Ray: Well, I might say that we intended to make such application. But in light of what we have now found out, our position is as we have stated it.

Trial Examiner Leff: Very well.

Mr. Ray: Captain Murray, will you take the stand, please?

JOHN C. MURRAY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Trial Examiner Leff: What is your full name?

The Witness: John C. Murray, M-u-r-r-a-y.

Trial Examiner Leff: And what is your address, Captain?

The Witness: 10705 Clifton Boulevard.

Trial Examiner Leff: Cleveland?

The Witness: Cleveland 2; Zone 2.

Q. (By Mr. Ray): Captain Murray, what is your age? A. 66.

Q. And what is your height? A. Five foot, six and one-half.

Q. What is your weight? A. 170 pounds.

Q. Have you ever played football? A. No, I did not.

Q. Have you ever been an All-American tackle? A. No.

Q. Or a fullback? A. No.

Q. By whom are you employed, Captain? A. By Pittsburgh Steamship Company, of Cleveland.

Q. Are you employed at the present time by Pittsburgh Steamship Company? A. No, sir, I retired.

Q. When did you retire, captain? A. December 31.

Q. Of what year? A. 1944.

Q. How long prior to that time had you been employed by the Pittsburgh Steamship Company? A. For 45 consecutive years.

Q. And how long have you had a Master's license? A. 43 years.

Trial Examiner Leff: I want to ask one question at this point.

Do you receive a pension from the Pittsburgh Steamship Company?

The Witness: Yes.

Q. (By Mr. Ray): How long have you been sailing vessels as Master for the Pittsburgh Steamship Company? A. Since 1914.

Q. Continuously, until you were retired, is that right? A. Yes, sir.

Q. Captain, during the Spring of 1944, were you Master of the Steamer Irving S. Olds? A. Yes, sir, I was.

Q. Now, while you were Master of that vessel, were you acquainted with, or did you know a seaman by the name of Howard Shartle? A. Yes, sir.

Q. Now, where and under what conditions did you meet Shartle, first? A. I was in the Pittsburgh Steamship Company office in the Rockefeller Building and Shartle came in the room seeking a position on one of the boats, and I engaged him.

Q. What if any documents did he exhibit to you at that time? A. Well, he said he had a Naval seaman's certificate, and he had served as a deck watch on the Great Lakes on, I think it was a Cleveland Cliffs boat.

Q. Now, when did he join the vessel? A. During the fit-out at Lorain.

Q. And you employed him as what? Did you assign him to any particular position on the vessel at that time? A. No, I sent him up to report to the First Mate, Mr. Dobson.

Q. Calling your attention to the same navigation season, did you at any time call Mr. Shartle up into the pilot house of the Steamer Irving S. Olds and request him to take the wheel? A. Yes, I did.

Q. Do you recall when that was? A. We were upbound in the lower Detroit River. I don't recall the date.

Q. Do you recall the circumstances surrounding that incident? A. Well, it was during daylight hours, in the forenoon, and very little traffic on the river. And I called him up and asked him to take the wheel.

Q. Where was Shartle? A. He was on lookout, on the forecastle deck.

Q. What was his position on the vessel? I mean, his rating on the vessel. A. He was a watchman.

Q. Was it or was it not your practice to have your watchmen and other seamen come to the pilot house to see what their ability was along the steering line? A. Yes, sir, that was my practice.

Q. What was the purpose of doing that, Captain? A. Well, to train those men and find out what their ability was.

Q. Now, after he came into the pilot house, tell us what you observed with respect to his ability to wheel? A. He did not have ability to wheel.

Q. Well, now, why do you say that? What is that based upon? A. Well, the wheelsman had to constantly guide him in what to do and he didn't seem to have the ability to go on and do the thing by himself, after being repeatedly instructed in what to do.

Q. How long was he in the pilot house during that time? A. Oh, I would say maybe an hour or an hour and a half. I didn't note the time.

Q. Captain, did you have any conversation with Shartle bearing upon union matters at that time? A. No, sir.

Q. Did you have any conversation with Shartle bearing upon union matters at any time prior to the time he was discharged? A. No, I did not.

Q. Did you say to Shartle that you would hate to give orders to negroes? A. No, I did not.

Q. Have you, during your sailing experience with the Pittsburgh Steamship Company ever employed Negroes? A. Yes, sir, I have.

Q. In what capacity? A. I had stewards from 1938 until I finished sailing, colored stewards.

Q. Captain, were you required to give orders to those stewards during the time you were acting as Master and they were acting as stewards? A. Yes, sir, I was.

Q. Now, there has been testimony in this case, Captain, that Shartle was discharged. Did you discharge Mr. Shartle? A. No, sir, I did not.

Q. Do you know who did discharge him? A. Mr. Dobson, the First Mate.

Q. And when did you find out for the first time that Shartle had been discharged? A. When I went up to the pilot house, going into Conneaut, or before we arrived at Conneaut breakwater, the Second Mate presented Shartle's book.

Q. What book, Captain? A. His continuous discharge book—or certificate, I should say.

Q. And presented that to you for what purpose? A. For signature.

Q. That was the first time that you— A. That was the first I knew of his discharge.

Q. Did the First Mate tell you at any time that Shartle had been discharged? A. He did right after that.

Q. And at the time he told you that Shartle had been discharged, did he state the reason to you for discharge? A. Yes, he told me he was discharging him for incompetency.

Q. Now, prior to the time that Shartle left the vessel, did he engage you in conversation? A. Yes, he did. When I was entering Conneaut between the breakwater and the piers in the harbor he came into the pilot house to know why I discharged him, asked me why I discharged him.

Q. And what did you say? A. I told him I did not.

Q. Did not what? A. Discharge him.

Q. What further conversation, if any, was had at that time? A. That the First Mate discharged him and he wanted to know why, and I told him that Mr. Dobson had told me for incompetency.

Q. What, if anything did Shartle say? A. Well, he said if he was incompetent, every man on the boat was incompetent. And at that time I ordered him from the pilot house, because I was navigating the ship in a hazardous place that required my full attention.

Q. Now, Captain, what if any steps did either you or any of your Mates take to secure a replacement for Shartle? A. The Mate informed me that he had discharged Shartle and asked me to order another A.B., which I did.

Q. How did you do that, Captain? A. I ordered him by ship-to-shore telephone.

Q. And who did you talk to? A. I think I talked to Mr. Farrer.

Q. Mr. Farrer is who? What position does Mr. Farrer have? A. He is in Captain Crawford's office, the fleet captain.

Q. Now, was another A.B. secured to take Shartle's place? A. We got a man in Shartle's place just before we left the dock, which was not an A.B.

Q. Well, was this man secured from shore, or was he a member of your crew? A. He was—the man that immediately took Shartle's place?

Q. That is right. A. He was from our crew.

Q. Did anyone come down, was anyone sent down from the office— A. Yes.

Q. —to take the place of Shartle? A. There was a man sent down.

Q. Was he an A.B.? A. No.

Q. Now, who did take Shartle's place, do you recall? A. If I remember correctly his name was Cole.

Q. Captain, what has been your practice during the many years that you have sailed with respect to whether you discharge a person or whether you leave such functions to your Mates? A. I have always left those functions to my First Mate.

Q. Captain, do you recall—

Trial Examiner Leff: Excuse me for interrupting you. Do I understand your testimony to be the First Mate has authority to discharge men under his jurisdiction?

The Witness: Yes, sir.

Trial Examiner Leff: How about the Second and Third Mates? Do they have like authority?

The Witness: No, sir.

Trial Examiner Leff: Do the Third and Second Mates have authority to recommend discharges for incompetency?

The Witness: Well, that would be considered by the First Mate, I presume.

Trial Examiner Leff: Well, are they expected to recommend a man for discharge or discipline if the man is incompetent?

The Witness: Why, I presume they would.

Mr. Ray: Are you through, Mr. Leff?

Trial Examiner Leff: Yes.

Q. (By Mr. Ray): Captain, after Shartle was discharged, did you sail short of the usual complement of A.B.'s on your vessel? A. Yes, we did.

Q. Now, was or was not that shortage reported to any Governmental agency? A. That was reported to the Marine Inspection, the United States Coast Guard office.

Q. And how was it reported? A. On a form for that purpose.

Q. And what, ordinarily, is included on that form, Captain? What information do you put on it? A. Well, we give the number, certificate number of the seaman who has been discharged or quit, and also the number of the man who takes his place, and the number of men that we are short in A.B.'s.

Q. How often would those reports go into the United States Coast Guard? A. Once a month.

Q. So that the fact that you were traveling short of A.B.'s was reported to, and became the knowledge of, the United States Coast Guard? A. Yes, sir.

Q. Now, Captain, did you attend any of the Captains' and Chief Engineers' meetings held by the officials of the Pittsburgh Steamship Company? A. Yes, sir, I did. Always do.

Q. Did you attend any such meeting held at the Hollenden Hotel, in Cleveland, during the Spring of 1944? A. Yes, sir, I did.

Q. What if any subjects were discussed by the officials at that meeting? A. Well, there were many subjects discussed: The operation of the ships and the manning of the ships, securing of crews, and also there were strict orders to take a neutral position with regard to union labor, to in no way interfere or try to influence anybody unless it interfered with the discipline or operation of the ship.

Q. Well, now, following that meeting, Captain, state whether or not a copy of the minutes of the meeting was sent to you on board your vessel? A. They were, some time after the meeting.

Q. Now, do you know whether or not those minutes were read to your officers or the information was disseminated in any way to your officers? A. Yes, sir, it was.

Q. How did that come about? A. That happened at a meeting in my room with the engineers and the forward officers, and the minutes of the meeting were thoroughly read and discussed.

Q. What if any instructions, independently of those minutes, did you give to your Mates and Engineers at that time? A. I requested them to live up to the instructions given in the minutes of the meeting as closely as possible.

Q. Captain, did you learn at any time that Shartle was an organizer for the National Maritime Union? A. No, sir, I did not, until after he was off my boat some time, and I was notified that there were charges preferred against the Steamer Olds.

Q. By Shartle? A. By Shartle.

Mr. Ray: Cross examine.

CROSS EXAMINATION.

Q. (By Mr. Belkin): How many A.B.'s did you start out with in the navigation season of '44, Captain Murray? A. I think, if I remember correctly, we had our 65 per cent.

Q. Well, you are speaking, obviously, to a landlubber. What do you mean by that? Just how many A.B.'s in number were there aboard your ship?

Trial Examiner Leff: Well, let's find out how many A.B.'s the Captain was required to carry aboard his ship.

The Witness: I was required to carry 65 per cent of my crew, my forward crew.

Trial Examiner Leff: And the crew is 36, is it?

The Witness: No, the crew is 12 in the forward department.

Trial Examiner Leff: I see. What is 65 per cent of 12?

Mr. Ray: I think the simplest way is to ask him how many.

Mr. Belkin: Seven.

Trial Examiner Leff: Is that even?

Mr. Belkin: Seven and eight-tenths.

Q. (By Mr. Belkin): In other words, you were required to carry approximately eight men?

Trial Examiner Leff: Eight A.B.'s?

Mr. Ray: You can't carry approximately that many.

Q. (By Mr. Belkin): Well, 65 per cent of 12 would be 7.8. Is that your answer, that you were supposed to carry 7.8 men aboard your ship as A.B.'s? A. Well, if we had the maintenance men, that would reduce that number.

Q. You are not answering my question, Captain.

Just how many A.B.'s were you required to carry? A. That would depend on how many men we signed on as maintenance men.

Trial Examiner Leff: Assume that your full complement on the forward end of the ship was 12. I think that's what you testified?

The Witness: Yes.

Trial Examiner Leff: How many of those 12 were required, in 1944, to be A.B.'s?

The Witness: Eight.

Q. (By Mr. Belkin): And how many A.B.'s did you sail with in 1944? A. Eight.

Q. You started out with eight men? A. Yes.

Q. As A.B.'s? A. Yes; if I recall correctly, yes.

Q. One of your Mates has testified that you had a lesser number. Was he incorrect, or don't you know? A. I don't know. That's going back too far for me.

Q. Would six A.B.'s be the number that you had aboard your ship? A. I wouldn't say.

Q. If one of your officers testified that that was so, would you deny that he was correct? A. Well, I would want to look at the record.

Q. If you carried less than eight A.B.'s you would be under the proper requirement for your vessel, is that true? A. No, I wouldn't say so.

Q. And why wouldn't you say so? A. Because the law requires that we could carry so many maintenance men, and then that would reduce the number of A.B.'s that we would be required to carry.

Q. All right. In 1944, in that navigation season, how many maintenance men did you have aboard the Olds? A. I just don't recall.

Q. Did you have any? A. At times we did, yes.

Q. Now, when Shartle was aboard the ship, did you have any maintenance men? A. I don't recall.

Q. That is April or May of 1944. A. I don't recall.

Q. With Shartle on the vessel, you were short your normal complement of A.B.'s, in any case, weren't you, Captain? A. No.

Q. Why do you say that? A. Because we sign the deckhand on as a maintenance man and then we don't require the eight men.

Q. In other words, you take an individual who isn't an A.B., and you sign him on as a maintenance man, and that solves your A.B. problem; is that right? A. According to Government regulations.

Q. Well, let's leave Government regulations out. No one is charging your Company with violating that regulation. But, on the basis of the proper navigation of your ship, Captain, did you have the full and necessary complement of A.B.'s after Shartle left you? A. According to law, we did.

Q. I am not asking you that, Captain. I am asking you, according to, or on the basis of, the proper navigation of your ship, which you, as a Captain, should surely know

after some 40 years of service on the Great Lakes, would you have the normal and proper complement of A.B.'s after Shartle left? A. According to law, we did.

Q. Well, that's not my question. Why can't you answer me? A. I am answering. If we sign some of our men on as maintenance men we are within the law and we have the correct number of able seamen to fulfill the law.

Trial Examiner Leff: How many A.B.'s do you ordinarily like to have on your ship in the forward end?

The Witness: Well, we usually have eight.

Trial Examiner Leff: You usually have eight. Now, how many did you start off with in the 1944 season?

The Witness: Well, I wouldn't be definite about that. I just don't recall. There is a record on it.

Trial Examiner Leff: After Shartle was discharged, did you then have eight?

The Witness: No, we didn't.

Trial Examiner Leff: All right. Will you proceed, Mr. Belkin?

Q. (By Mr. Belkin): You say you interviewed Mr. Shartle in the offices of the Company before you hired him. Did you, at that time, ask him how many years of experience he had as a seaman? A. I don't recall.

Q. Did you ever discover how much experience he had? A. He told me something about his experience, which was three months on the Great Lakes.

Q. So you knew, when you hired him, that he was a relatively inexperienced man, isn't that true, Captain? A. Well, I didn't know anything about that. I presumed a man with an A.B. ticket would be competent.

Q. I am not asking you that. I am asking you whether you knew he was inexperienced. A. I didn't.

Q. Isn't it true that in examining his papers you found out that he had been trained, not on the sea, but at a Coast Guard Station or school? A. No.

Q. Didn't you ever find that out? A. No.

Q. Did it make any difference to you where he got his training, Captain? A. No.

Q. While he was aboard your vessel, Captain, I take it by your testimony you found out he wasn't an experienced wheelsman, is that correct? A. I found that out by actual observation.

Q. Yes. That's your testimony, that you called him up. Did you ever ask him to take the wheel before that time in the Detroit River? A. No.

Q. How many weeks had he been aboard your vessel before you asked him to do this? A. I don't recall.

Q. Well, was it in the first three or four trips that you took? A. Why, it might be, yes.

Q. Would you say it was after the first three or four trips? A. No. I wouldn't be sure.

Q. Now, after he had been called up by you in the Detroit River, did you ever ask him to wheel again? A. No.

Q. You made no effort to improve his wheeling ability thereafter? A. No, because he didn't have ability.

Trial Examiner Leff: Did you ever discuss with anybody connected with the Company the fact that he wasn't a good wheelsman, that he wasn't able to wheel properly?

The Witness: No, sir.

Trial Examiner Leff: With anyone on the ship?

The Witness: No, sir.

Trial Examiner Leff: Did you discuss it with the First Mate?

The Witness: I did not.

Trial Examiner Leff: Was the First Mate present at the time Shartle was wheeling?

The Witness: No, sir. The Third Mate was, I think.

Q. (By Mr. Belkin): Now, did you ever ask any of the Mates to give Shartle any further instruction in wheeling? A. No, I did not.

Q. Did you at any time during the navigation season of 1944, ask any other A.B.'s to wheel the boat for you while you were up there in the pilot house? A. Yes, sir. That was a common practice I had, of having the men come up and take the wheel.

Q. And have you done this in 1945? Have you been sailing this year, Captain? A. No, sir.

Q. Did you do it in 1943? A. Yes, sir.

Q. And you did it in 1942, I take it? A. Yes, sir.

Q. Now, in 1942, did you find seamen who were inexperienced at wheeling? A. Yes, sir.

Q. Can you tell me the names of any of those men? A. I cannot.

Q. Can you tell me what happened to those men; whether they stayed with your vessel or not? A. I don't recall.

Q. Did you discharge them because they were incompetent in wheeling? A. No.

Q. These men probably had not had a great deal of experience on the Great Lakes and, therefore, didn't know how to wheel; isn't that the truth, Captain? A. I just don't recall. If a man showed marked ability I took him back up again.

Q. If he didn't, you let him do other work, is that right?

I didn't get your answer. A. Well, I just didn't pay any attention to what happened to him after that. He was one of our crew.

Q. Now, after Mr. Shartle came up to the wheel house and said to you, "Why am I being discharged?" And you said, "Why, the Mate told me you are incompetent," did you make any effort to find out if the Mate's judgment was correct in Shartle's case? A. The Mate informed me this man was incompetent, and I have confidence in my Mate, who has long experience. And I wouldn't think of doubting his opinion or word in matters of that kind.

Q. So you made no independent investigation of your own? A. Only what the Mate told me, which I accepted.

Q. Which means that you didn't make an independent investigation, is that right, Captain? A. Investigated it with the Mate.

Q. Well, I can't seem to get you to answer my questions directly. You may explain them if you wish.

Did you or did you not make an independent investigation of your own as to why Shartle was fired? A. No, other than with the First Mate.

Q. Well, you didn't make an independent investigation? A. With the First Mate?

Q. You took the Mate's recommendation, isn't that true, Captain, and made no investigation of your own? A. I just don't understand what you are asking me.

Trial Examiner Leff: Hasn't the witness already answered that?

Mr. Belkin: Yes. All right.

Q. (By Mr. Belkin): Is your testimony—I want to be clear on this, Captain—that you didn't know anything about this until just before your ship entered Conneaut harbor? A. Yes, sir, that's right.

Q. And that Shartle was dismissed in the next eight hours after you first heard about it, is that right? A. I think Shartle was dismissed when I knew about it.

Q. You mean, then, that he was dismissed— A. My first knowledge, as I have testified, was when the Second Mate brought his book to me.

Q. And the Second Mate said— A. Or his certificate, I should say.

Q. You mean the First Mate, don't you, Dobson? A. Second Mate.

Mr. Ray: Second Mate.

Q. (By Mr. Belkin): And then, the First Mate told you that he had already discharged Shartle? A. Yes, sir.

Q. In view of the fact you were going to be short A.B.'s as a result of Shartle's leaving, did you make any effort to discuss with the Mate the fact that you would be short A.B.'s? A. I was not aware that I'd be short A.B.'s.

Q. Was it easy to get A.B.'s in the Spring of 1944, Captain? A. I don't recall up to that time that we had any difficulty.

Q. You had all you wanted? A. (Witness nodded head.)

Mr. Belkin: The witness nodded his head.

You see, we are having a stenographic record, and she can't take that.

Do you mean you want to answer yes?

The Witness: Put your question again.

Trial Examiner Leff: Read the question.

(Thereupon the question was read as follows: "Q. You had all you wanted?")

A. Yes, we had all we required.

Q. (By Mr. Belkin): Mr. Garbutt, the Manager of Industrial Relations for the Company, testified this morning that during the entire year of 1944 the Company was short approximately ten per cent of the personnel it required, including A.B.'s.

Now, do you want us to understand, from your testimony, that that wasn't true in the case of the Olds, as the

ship commander? A. I don't know anything about the Company. I am talking about my own ship.

Q. In other words, your ship, the Olds, had all the A.B.'s it needed and wanted, is that right? A. At that particular time, yes.

Q. And you anticipated no difficulty at all in securing an A.B. replacement for Shartle? A. Not at the time he was discharged.

Q. And that was in what month? A. I don't recall.

Q. It was in April or May of 1944, wasn't it? A. Well, I wouldn't be sure.

Q. Did the Mate, in speaking to you about Shartle's dismissal, tell you anything about his ability or inability to splice a cringle? A. Yes, that was one of the things he enumerated.

Q. Then, you did ask him why he was firing Shartle? A. No. He told me.

Q. What else did he enumerate? A. His inability to handle the electric mooring machines.

Q. Did he tell you how long ago the incident involving the electric mooring machine had happened? A. I don't recall that he did. He just told me that at no time was this fellow capable of handling the mooring machines, and that he was a hazard to the rest of the men because of the danger of parting these electric wires, which are much different than the steam winches.

Q. Did you ask the Mate whether or not he had permitted Shartle to operate these winches after he had made a mistake? A. He told me that he had.

Q. So that the Mate, although he said to you, Shartle is a danger to the men because of his inability to handle winches, had continued to let him operate those winches? A. He didn't let him operate those winches of his own free will. He had a man right there watching everything he was trying to do, to correct him.

Q. But Shartle was permitted— A. —which they did, and Shartle could not master the winches.

Q. But Shartle was permitted to operate them up to the day— A. Under the supervision of the Second Mate.

Q. I grant you that. But he was permitted to operate those winches up until the day of his discharge, wasn't he? A. No, sir.

Q. Isn't it true the only time— A. When he failed to operate them, the Second Mate tried to instruct him and to get him familiar with them, and they were unable to get him to handle them. Therefore, he was not allowed to handle them for some time before his discharge.

Q. Well, that is somewhat surprising, Captain, in view of the fact that your Second Mate testified that after an incident in which Shartle had neglected to turn off or adjust the winch properly and the Mate had stepped in and done so, he permitted Shartle to operate that winch thereafter.

Mr. Ray: Under his supervision, Mr. Belkin.

Mr. Belkin: I grant you that.

Q. (By Mr. Belkin): Now, is it your testimony that Shartle was not permitted to operate the winches after this incident occurred? A. After he had been given every chance to operate them, then he was stopped from even trying.

Q. Tell me how long before his discharge was Shartle stopped from operating these winches, under supervision or not under supervision? A. I just couldn't say.

Q. Didn't you ask that of the Mate as he told you about this matter? A. I may have, but that's so far away I don't recall.

Q. Was it a factor in your consideration of this matter as to whether or not to accept the Mate's recommendation as to Shartle's discharge? A. The factor was I accepted the Mate's opinion on all such matters. I have always done so. Otherwise, I would disrupt the discipline on my ship.

Q. Well, if you accepted the recommendation of the Mate, why would you ask the reasons for the discharge or the reasons for the Mate's decision on the discharge? A. Why, I don't get your question.

Q. Let me put it this way, Captain: You testified the Mate came to you and told you he had discharged Shartle? A. Yes.

Q. And then he told you all the reasons for that discharge, isn't that true? A. Yes.

Q. Well, Captain, if you accept the Mate's recommendation without question, will you explain to us why it is necessary to get the reasons for his decision? A. I still don't get you.

Q. Let me ask you this question, Captain: The Mate has fired other men than Shartle, hasn't he? A. I presume he has.

Q. Now, when he has fired other men, have you accepted his decision without question? A. Yes, sir.

Q. And in the case of firing these other men, has the Mate given you the reasons for his decision to fire them? A. I just don't recall. I have always had an understanding with my Mate that if the men didn't suit him, they didn't suit me, and he was at liberty to discharge them, but that I wanted him to be fair in his reasons for discharge. That was my instructions to my Mate, and I accepted his decision when he discharged a man.

Q. Now, you accepted his decision in this case, did you not, Captain? A. Yes, sir.

Q. Yet, although you always accepted his decision, in this particular case you asked for the reasons for it, is that right? A. I didn't testify that I asked for the reasons.

Q. But you were given the reasons, is that right? A. The Mate told me why he had discharged him, and I accepted that.

Q. Did he always give you reasons for discharging a member of your crew when he did so? A. Well, are you referring to Mr. Dobson?

Q. Yes. He is your First Mate, isn't he? A. Yes.

Q. Yes, I am referring to him. A. That was the only discharge we had that I recall.

Q. Then, you had no other discharges by Mr. Dobson in the 1944 season? A. Not that I recall.

Q. So that, as a matter of fact, you never had accepted Mr. Dobson's decisions as to discharge before, because you never had an opportunity to, isn't that so, Captain? A. I didn't have Mr. Dobson with me prior to 1944.

Q. I grant you that. But, in 1944, you had never had the question of whether or not to accept Mr. Dobson's decision on discharge of a member of your crew, isn't that true? A. I don't seem to understand what you are asking me.

Q. I am trying to find out what your procedure was when a man was fired by Mr. Dobson. At first, you testified, Captain, as you will recall, that you always accepted Mr. Dobson's recommendation when he fired a man. A. I always accept my First Mate's recommendations.

Q. I understand that. You always accept your First Mate's recommendation. A. Absolutely.

Q. Now, Mr. Dobson had not been a First Mate with you before, is that correct? A. That's right.

Q. In the 1944 season, he was your First Mate? A. That's right.

Q. And up until the time Shartle was discharged, he had never had an opportunity to discharge anyone else, is that right? A. Well, I don't recall of him discharging anybody else.

Q. So that, to the best of your recollection, this is the first time that Dobson recommended that a crew member be discharged? A. That's right.

Q. Now, were you familiar with Mr. Dobson's judgment—strike that. Had you investigated in any way, prior to the incident of the Shartle discharge, Mr. Dobson's judgment in the matter of discharging personnel? A. Yes. I knew Mr. Dobson very well—

Q. Had he sailed with you— A —for many years.

Q. Had he sailed with you before? A. No.

Trial Examiner Leff: How many people did you discharge in 1944?

The Witness: I wouldn't want to answer that, because I just don't recall.

Mr. Ray: Mr. Examiner, when you say "you," are you referring to the vessel, itself?

Trial Examiner Leff: I mean the people on the vessel. I don't mean you, individually; but how many people were discharged on the vessel?

The Witness: I couldn't answer that.

Trial Examiner Leff: Do you recall the names of any, outside of Shartle?

The Witness: There were some others, yes.

Trial Examiner Leff: Can you recall their names?

The Witness: No. If the crew list were before me, I might. But I don't recall, now.

Q. (By Mr. Belkin): Do you recall if Mr. Dobson discharged these others? A. How is that?

Q. Do you recall if Mr. Dobson discharged— A. I think there were some other discharges. I just don't recall the names.

Q. And did Mr. Dobson discharge these others? A. Yes.

Q. Was that pamphlet, entitled "The N.M.U. Fights Jim Crow" aboard your vessel in the spring of '44, Captain? A. I don't recall.

Q. You never saw it aboard the ship at all? A. I don't recall whether that was aboard or not. Now, it might have been. There were a lot of pamphlets around, a lot of literature from every source thrown aboard at the Soo, and I didn't pay any attention. That might have been aboard; it might not.

Trial Examiner Leff: Just a minute. Off the record.

(Discussion off the record.)

Trial Examiner Leff: On the record.

Q. (By Mr. Belkin): Was this pamphlet, a speech by Congressman Bradley, aboard your vessel? A. I believe it was.

Q. Captain, you had one of these new electrically controlled vessels, had you not, in 1944? A. Yes, sir.

Q. And the winches on it were a new type, were they not? A. No. We had the same type on the Steamship Miller.

Trial Examiner Leff: Was that a new vessel, too? A new type vessel?

The Witness: The Miller came out in '38.

Q. (By Mr. Belkin): That was a relatively new vessel, was it not, then, Captain? A. Well, she is the later type of vessel.

Q. Yes. The earlier type of vessels did not have this winch, did they? This type of electric winch? A. Well, I don't know. Not any of the vessels that I had command of, didn't have any.

Q. Now, when you got men aboard your vessel who were unaccustomed to the electrical operation on your ship, did you give them any course of training in the operation of these new devices?

Mr. Ray: There, again, when you say, "did you," do you mean by him, or the—

Q. I mean you or your officers? A. The Mates, always.

Q. They were instructed to give this kind of instruction? A. Yes.

Q. How long did it generally take to get your men familiar with the operation of the various devices aboard the ship if they were new to the type of vessel?

Mr. Ray: I think you should pick out the device, Mr. Belkin. That question isn't fair the way it is.

Q. Let's confine it to the winch. A. To the electric winches?

Q. Yes. A. I wouldn't answer that, because that I left solely up to the Mate, and I wouldn't be answering it correctly and rightly if I set any specified time. So I won't answer that question.

Q. I see. Then, Captain, I'd like to ask you this question: You, as Master of the vessel, probably told your officers, did you not, to give the men a reasonable time in which to learn the operation of these winches? A. Well, I left that largely to the First Mate.

Q. And did you feel that generally, to your observation of his work, he gave the men a reasonable time to learn how to operate these winches? A. I think the First Mate in all cases did.

Q. Now, some of the men who were taught to operate these winches were probably slower than others, were they not, Captain? A. I wouldn't say.

Q. But there might be a variance in the time it took them to learn to operate a winch? A. I don't know.

Q. When did you first find out—strike that. You found out in March, 1944, there was going to be an election conducted by the Government aboard your ships, isn't that true? A. There was some talk of an election being conducted. I didn't pay much attention to it; nor I didn't definitely know very much about it.

Q. Weren't you very definitely told about it at the Hollenden? A. Just before it happened they said there was a possibility it was going to happen sometime through the summer, in the meeting.

Q. I take it in March of 1944 you knew there might be an election aboard your vessel? That is correct, isn't it, Captain? A. Yes.

Q. When did you first definitely know there was going to be an election aboard your ship, Captain? A. I don't recall. It was sometime before the election. I don't recall.

Q. Did you receive this letter from President Ferbert sometime after the 2nd of May, Board's Exhibit 2? A. Yes, sir.

Q. And didn't this tell you there was going to be an election, Captain? A. Yes.

Q. So that you knew, in the first part of May, that there would be an election aboard your ship? A. I presumed there would, yes, according to that letter.

Q. Now, you were familiar, too, weren't you, with the fact that the Union would conduct an organizational campaign aboard your vessel, then, were you not, Captain? A. No, I wasn't.

Q. You presumed that this election would be held without the Union attempting to organize the men aboard your vessel? A. I didn't know anything about what the procedure was.

Q. Are you familiar with the fact that there is a union called the N.M.U. on the Great Lakes, Captain? A. It seems to me I have heard of it.

Q. And have you heard that this union has attempted to organize other companies, other than the Pittsburgh Steamship Company? A. I wouldn't say that I have. I haven't paid any attention to that matter.

Q. So that you were completely unaware of how a union would operate in attempting to organize men aboard vessels, is that true, Captain? A. I really hadn't given it any thought.

Q. And you had no idea that if the union was going to have an election aboard your ship, it might put a man on to organize the crew? A. I didn't think of it. I didn't realize the thing. I never thought of such a thing.

Q. You at no time asked your officers or anyone else whether anyone was attempting to organize men aboard your ship? A. I didn't.

Q. And, therefore, you had no idea at all Mr. Shartle was a union organizer until after he had left the ship? A. I did not.

Q. Captain, did you ever testify before the War Labor Board, in 1943, as to the shipping situation on the Great Lakes? A. Yes, I did.

Q. And isn't it true that at that hearing, the N.M.U. had representatives and put forward its position on that

question? A. I don't recall what it was. I gave my experience and my length of service.

Q. Didn't you sit in at the hearing— A. —and requested that we be let operate as we had been doing until the emergency, war emergency, was over. If I recall correctly, that's what I said down at Washington.

Q. And you were discussing the question of the manpower situation on the Lakes, isn't that true? A. I wouldn't say that I did, no.

Q. Well, weren't you called down to testify as to that kind of a situation, Captain? A. Well, that's so long ago I just don't recall what did transpire.

Q. You don't recall why you were there? A. I was down there, but I don't recall. I couldn't tell you a word I said at that time.

Q. Is it customary for you to testify at hearings like that, Captain? A. I have never testified before. I didn't know I was testifying then.

Q. This was a most unusual situation for you; you had never done this before, had you, Captain? A. You mean here, today?

Q. No. At the War Labor Board, in '43. A. I don't think I had, no.

Q. And although it was a most unusual situation for you and you had never done it before, you now recall nothing that you said at that hearing, is that true? A. I couldn't go back and tell you anything I said. The thing wasn't important to me at that time; didn't pay any attention much to it.

Q. Who called you to Washington to testify at that hearing, Captain? A. Well, now, I just couldn't tell you who did.

Q. Wasn't it your Company? A. I presume maybe it was our Company. I wouldn't be sure of that.

Q. And isn't it true, Captain, just to refresh your recollection, that the matter before that hearing was a question of hiring men on Great Lakes' vessels and whether or not it was to be set up—whether or not the setup was to be like that on the ocean? A. I don't—my mind don't go back that far. I just don't recall what it was.

Q. How many men were aboard your vessel in 1944, Captain? Approximately 36, I understand; is that correct? A. No, that's not correct.

Q. How many did you have? A. Thirty-four.

Q. Thirty-four. Do you know Captain Gerlach? He is a fellow Master employed by the Pittsburgh Steamship Company. A. How does he spell his name?

Q. Gerlach, G-e-r-l-a-c-h. A. Yes, I know him.

Q. Captain Gerlach testified that on his boat he had some 36 men in the spring of 1944. He said, and I quote to you:

> "I found out about so-and-so being the Union organizer. It is a small boat and things get around. You pick up a drop here and a drop there."

Would you say that he was wrong in his estimate of how information gets around aboard a boat?

Mr. Ray: I object.

A. I don't—

Mr. Ray: Wait a minute.

I object. That certainly is not a proper question as to whether Gerlach was wrong.

Trial Examiner Leff: I don't so interpret the question. I interpret the question to be, do things of that kind get around the boat.

Mr. Ray: Ask him about his own vessel, then, rather than what happened on Gerlach's vessel.

Trial Examiner Leff: All right. Go ahead.

Q. (By Mr. Belkin): Is that the way information gets around on your vessel? A. I don't know.

Q. You have been sailing the Lakes for some 45 years, Captain. Do you want us to believe that on board your vessels information does not get around very, very quickly, in view of the fact that men are living together 24 hours a day and, as Gerlach says, you pick up a drop here and there; things get around? A. Well, what you believe is not important. I am telling you that I did not hear any underground talk or information on my boat.

Q. Now, Captain, I'd like to go back to that hearing before the War Labor Board in 1943. Isn't it true that you appeared before that Board as an expert and testified as to the rotary shipping system advocated by the N.M.U.? A. I don't recall that.

Q. And isn't it true, Captain, that—

Trial Examiner Leff: Well, let me understand your answer. Do you mean to say that you don't recall whether you did or did not, or do you intend to deny that you did so testify?

The Witness: I testified as to my experience on the Great Lakes and the length of service that I had, if I recall correctly. I didn't know anything about the shipping hall or anything else; had never been conversant with it or didn't have anything to do with it or anything.

Trial Examiner Leff: Well, the War Labor Board wasn't interested in determining what your length of service on the Great Lakes was, was it? They wanted information from you, didn't they?

The Witness: Well, I gave the information, if I remember correctly, as to the number of men I had exchanged and shipped, as to the type of men I carried, which many of them were union men at that time, and that I preferred to ship my own men. That was, if I recall it, something along that line. That's the testimony that I gave down there.

Trial Examiner Leff: You mean you prefer to ship your own men rather than select men from a hiring hall, is that it?

The Witness: That's what I said; in substance, that's what I said at that meeting.

Q. Didn't you explain in great detail why you felt that the rotary shipping system and the use of a hiring hall would not operate on the Great Lakes? A. I don't recall that.

Q. Well, isn't it true that you have just testified, in answer to the question of the Trial Examiner, that you did— A. I told the Trial Examiner that I preferred, that I testified that I preferred to continue our method of securing our men for the duration of the emergency.

Q. Rather than adopting the hiring hall and rotary shipping system? A. Which I was not familiar with.

Q. And is it your testimony, now, that you did not discuss the rotary shipping system and that you were not familiar with it? A. I am not familiar with it.

Q. Even now? A. No.

Q. And you aren't familiar with the policies of the N.M.U. on the rotary shipping question? A. No, sir.

Q. And you weren't familiar with them then? A. No.

Mr. Belkin: That is all.

RE-DIRECT EXAMINATION.

Q. (By Mr. Ray): Captain, are you familiar with the securing of waivers from the United States Coast Guard in cases where shortages appear in your crew? A. Why, yes. Those waivers are filled out and signed by the Master of the vessel and mailed to the Marine Inspection Service of the United States Coast Guard before the vessel leaves port.

Q. That is the report you testified about before in your testimony? A. The report, yes.

Q. Now, after those reports go in, do you or do you not receive a waiver from the Coast Guard, permitting you to travel short-handed? A. I don't recall ever receiving such.

Q. Did you receive any communication at all from the Coast Guard after these reports would go in relative to crew shortages? A. Well, I don't recall that.

Q. Now, Captain, did First Mate Dobson recommend the discharge of Shartle, or did he tell you that he had discharged Shartle? A. He told me he had discharged Shartle.

Mr. Ray: That is all.

Trial Examiner Leff: Any further questions?

Mr. Belkin: I have nothing.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Trial Examiner Leff: Off the record.

(Discussion off the record.)

Trial Examiner Leff: On the record.

Mr. Hinslea: If the Examiner please, prior to the conclusion of the Union's testimony in July, during the testimony of Mr. Lawrenson, the Respondent requested that Mr. Lawrenson be brought back for further cross examination, and also requested that he produce some of the contracts that he has with Lake companies.

Mr. Lawrenson is here now, and we are going to question him, in light of that request made in July.

Trial Examiner Leff: Very well. Mr. Lawrenson has been previously sworn.

JACK LAWRENSON, a witness recalled for further cross examination by the Respondent, having been previously sworn, was examined and testified as follows:

CROSS EXAMINATION. (Continued)

Q. (By Mr. Hinslea): Mr. Lawrenson, have you, at our request, brought with you any of the contracts that were in force with your Union in 1943? A. I haven't them here, but we can get them for you very quickly.

Mr. Belkin: If I may interrupt at this moment, I must say that I recalled that the Respondent asked to have Mr. Lawrenson brought back for further cross examination, but I had completely forgotten that he asked for the contracts, too. I forgot what the relevancy was at that time, and when I called Mr. Frank Jones, here, and asked him to bring Mr. Lawrenson down, I didn't say a word about the contracts, because I had forgotten about them.

We will produce them, of course. We can have them by tomorrow, can't we, Mr. Lawrenson?

The Witness: Possibly—

Trial Examiner Leff: We are going to finish the hearing today, I thought.

Mr. Belkin: Well, perhaps we can get them here, in Cleveland.

Trial Examiner Leff: Can you get them here within a short time?

The Witness: Yes, I think we have them here in the files, bound copies of most of our contracts.

Trial Examiner Leff: I don't know how they are relevant, but we should have them here.

Mr. Hinslea: They are relevant in this case. Mr. Lawrenson was testifying as to the rotary system in the contracts, and we said the contracts would speak for themselves and asked that they be produced.

We don't ask for all the contracts. But I suggest that it be stipulated that the hearing may be concluded and Mr. Lawrenson get to Mr. Belkin copies of his contracts that he had in '43 with, say, the Cleveland Tankers, Inc.

The Witness: They are all bound together. You can have them all. They are all bound. We have them in a file.

Mr. Belkin: We have just sent over for them, and they should be here within a half hour.

Mr. Hinslea: Then, may it be understood they can be put in the record, Mr. Belkin?

Mr. Belkin: Yes.

Mr. Hinslea: Then, I have no questions to ask of Mr. Lawrenson.

Trial Examiner Leff: I wish you would indicate to me, for my own guidance, what point you are seeking to make with respect to that. You will be offering certain contracts. They may be rather voluminous in size, and I'd like you to indicate to me just what in those contracts you would want me and the Board to consider.

Mr. Ray: If the Trial Examiner please, the purpose for which we desire to have the contracts placed in the record is this:

You will recall that Mr. Lawrenson was shown one of the letters sent to the unlicensed personnel by President Ferbert, of the Pittsburgh Steamship Company, and Mr. Lawrenson stated that, with respect to the rotary hiring system, the statement contained in the letter was a misstatement, and that it did not properly state the position of Union on that subject. I have forgotten now, whether Mr. Lawrenson said that that position was correctly reflected in the contracts, but, at least he referred to the contracts in his explanation of that situation.

So, the purpose for which we desire to have the contracts introduced in evidence is to establish that the statement made by President Ferbert with respect to the rotary hiring system was a correct statement of the Union's position.

Trial Examiner Leff: Very well.

Mr. Belkin: They will be produced within a half hour.

Q. (By Mr. Hinslea): Mr. Lawrenson, just one more question. During the year 1943, the National Maritime Union was actively engaged in attempting to organize the Pittsburgh Steamship Company, was it not? A. That's right.

Q. And as a result of that attempt, a petition for certification was filed in the fall of 1943? A. I believe it was, yes.

Mr. Hinslea: That is all.

Q. (By Mr. Hinslea): Another question: Prior to 1944, there were no unfair labor practice charges filed by the Union, so far as you know, against the Pittsburgh Steamship Company? A. None that I know about.

Mr. Hinslea: That is all.

Trial Examiner Leff: There is one question I want to ask you.

Assume this situation: A man is shipped out as a deck watch. Can he then, under the NMU principles, and its usual contracts, be promoted to a watchman or lookout when there is a vacancy, or must that vacancy be filled by the man at the top of the list at the Union Hall?

The Witness: We permit promotions if the man has the government qualifications.

Mr. Ray: Now, it was on that very issue, on that very discussion that we requested the contracts to be furnished.

Mr. Belkin: I recall it now. That is why I am agreeing to have them here. I make no objection.

Trial Examiner Leff: When the contracts are received in evidence, or sometime before the close of the hearing, or, if you haven't time, in your brief, will you indicate the particular provisions in the contracts which you contend bear out your position?

Mr. Ray: We will be happy to do so.

Trial Examiner Leff: Thank you.

Mr. Belkin: Well, now, Mr. Trial Examiner, I think proper procedure is, since Mr. Lawrenson has been called by the Respondent for cross examination, that we permit him to leave the stand until they finish their case. Then, I am going to call him back.

Trial Examiner Leff: Oh, yes.

You are excused temporarily.

(Witness excused.)

Trial Examiner Leff: Has the respondent any further witnesses?

Mr. Hinslea: No. The Respondent rests.

Trial Examiner Leff: Has the Board any rebuttal?

Off the record.

(Discussion had off the record.)

Trial Examiner Leff: The hearing is in order.

Mr. Belkin: I am calling Mr. Lawrenson as my first rebuttal witness.

BOARD'S REBUTTAL.

JACK LAWRENSON, a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified as follows:

DIRECT EXAMINATION. (In Rebuttal)

Q. (By Mr. Belkin): You are the same Jack Lawrenson who has been previously sworn, are you not? A. That's right.

Q. Mr. Lawrenson, you were here while Captain Murray testified about his appearance before the War Labor Board in 1943, were you not? A. That's right.

Q. Were you at that same hearing? A. I was.

Q. What was the issue before the War Labor Board, to the best of your recollection, Mr. Lawrenson? A. The issue was a Panel decision which had awarded to the Union a hiring hall clause, wage increases and working rules, working rules for the deck, engine, and steward's departments.

Q. I take it, then, there was an appeal? A. An appeal, that's right.

Q. Before the Board in Washington? A. That is correct.

Q. The appeal was made on the basis of this Panel decision granting the NMU a hiring hall system on the Great Lakes, is that right? A. Yes, passes for the patrol men to visit the vessels, wages, and working rules.

Q. Were you present throughout that hearing? A. Yes.

Q. Did you hear Captain Murray testify at that hearing? A. Yes.

Q. Do you know why Captain Murray was called? A. Presumably Captain Murray, as a Lakes Captain, was brought there as an expert to testify how unworkable the contract would be if the Panel's decision was sustained.

Mr. Ray: I object.

Trial Examiner Leff: I will have to sustain the objection and strike out the answer unless you know or you can testify as to what you heard Captain Murray testify, in substance. But we don't want your presumptions.

Mr. Belkin: All right. I think the question was improper.

Q. (By Mr. Belkin): Mr. Lawrenson, what did Captain Murray testify about or to at that hearing? A. Captain Murray testified to the effect that the Panel's decision would be completely—these are the general words. I can't recall, of course, the precise language.

Trial Examiner Leff: Yes.

A. That the Panel decision would be completely unworkable on the Great Lakes; that they had a tradition here, where masters and mates hired their own men, knew them well for years, and built up such a relation between masters and men that any interference would cause a complete breakdown on the Great Lakes. And, in fact, I think he went on to say many of the masters and mates would leave the Great Lakes if the decision went in to discontinue that practice.

Then, he went on, further, to discuss the working rules as awarded by the Panel and the unworkability of those on the Great Lakes.

That's why I said his testimony was as an expert seaman.

Q. Were any of the other captains called? A. None at that hearing. As I recall, I believe Captain Murray was the only one.

Q. Did Captain Murray discuss the rotary hiring system as advocated by the NMU? A. He didn't call it the rotary hiring system. Let me think. He discussed it in terms of accepting unknown men from unknown sources, as contrasted with personal hiring and personal relations with the men. That was the general substance of it.

Q. Did he testify he was familiar with hiring men from a hiring hall? A. Not in detail, as I recall it.

Q. In general terms? A. In general terms as I have just described.

Q. And was the NMU represented at this hearing? A. Yes. I was the NMU representative together with the attorney, Mr. Standard.

Q. Did the two of you present it? A. Mr. Standard presented part of it. I handled the working rules.

Q. Did you discuss the rotary system and the hiring halls— A. Oh, yes. A great many days were spent on that.

Q. —in detail? A. In detail.

Mr. Belkin: That is all.

CROSS EXAMINATION. (In Rebuttal)

Q. (By Mr. Hinslea): Mr. Lawrenson, Captain Murray testified on whether or not it was more helpful in the operation of his ship to hire men that he knew nothing about; or, the master or mates be given the prerogative of selecting their own men wherever they could. Wasn't that his testimony? A. His testimony was exactly as I have described it. He contrasted the two methods, not only for his own ship, but the entire Great Lakes.

Q. And when he talked about closed shop or hiring out of the Union Hall, he stated that because a master or mate was forced to take someone they knew nothing about, it puts them in a position whereby they might not be able to navigate their vessels as well as if they were allowed to go any place and select their own men any place they could find them; is that it? A. That was the general gist of his testimony.

Mr. Hinslea: That is all.

Mr. Belkin: No further questions.

Trial Examiner Leff: The witness is excused.

(Witness excused.)

Mr. Belkin: I will now call Arno Weissflog.

ARNO WEISSFLOG, JR., a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified as follows:

DIRECT EXAMINATION. (In Rebuttal)

Q. (By Mr. Belkin): You are the same Arno Weissflog that was previously sworn? A. That's right.

Q. Arno, there has been some testimony in this hearing about your experiences aboard a vessel operated by the Pittsburgh Steamship Company. Just so we get started again, what was that ship? A. Samuel F. G. Morse.

Q. And the Captain on her was? A. Clarence Gerlach.

Q. And the chief engineer was Chief Hunger? A. Hunger, yes.

Q. Now, both you and the captain have testified—

Mr. Ray: Hunger, the chief on the Morse?

The Witness: No. I forget his name. It is not Hunger.

Q. Well, the record will show his name is—it wasn't Hunger, then, I take it? A. No.

Trial Examiner Leff: Will you try to keep your voice up so the reporter will get it.

The Witness: Yes.

Q. Arno, both you and the Captain have testified about a certain incident which occurred in the galley of the vessel. The Captain stated that he asked you to leave the galley one day during, I believe, the noon meal, is that right? A. That's right.

Q. What were you doing in the galley that day, Arno? A. I had finished eating. And it wasn't in the galley. It was in the messroom.

Q. It was in the messroom? You finished eating where? A. In the dining room, along with the captain. Then, I went to the crew mess for my lunch period and was discussing the union and general conditions aboard the vessel.

Q. Were you talking to any of the girls who waited on table? A. No. The girls waited in the dining room, not in the crew mess.

Q. That then, I take it you were talking to the crew? A. That's right.

Q. In the messroom, concerning union matters? A. That's right.

Q. What union matters, do you recall, Arno? A. We were talking about hiring hall, overtime, working conditions, better quarters, and things like that.

Q. What was the next thing that happened? A. Well, the captain came in and grabbed ahold of me and shoved me out of the messroom.

Q. How long were you allowed for lunch, Arno? A. It was generally a half-hour period.

Q. It began at 12:00 o'clock noon and ended approximately 12:30? A. It varied, yes, around that time.

Q. And you ate in the dining room with the captain and the officers? A. That's right.

Q. So that, this day, I take it, you had gone in about 12:00, eaten with the captain, then gone into the mess room to talk to the crew? A. That's right.

Q. Were you talking with the crew within your half-hour or after your half hour? A. Within the half hour.

Q. There has also been testimony, Arno, about the time when you were in the engine room talking to members of the engine crew and the chief engineer ordered you out. Do you recall that incident? A. No. I was in the deckhouse, and the captain forced me out of the deckhouse.

Q. When did that occur, Arno? A. That was around June 28th, in or around that period; June 27th to 28th.

Q. Were you on watch at the time? A. No.

Q. What were you doing up in the wheelhouse? A. It was in the deckhouse.

Q. In the deckhouse, I mean? A. It is the firemen's quarters. I was in there talking to the firemen about the union and different things.

Q. And then, the Captain came along and pulled you out of that deckhouse? A. That's right.

Q. The question I want to ask you, Arno, is this: were you on watch or off watch at the time you were in the deckhouse talking union to those men? A. I was off watch.

Q. What was your watch? A. I was on 2:00 to 6:00.

Q. And how long have you been on the 2:00 to 6:00 watch? A. About two and one half or three weeks.

Q. And what time were you talking to these men? A. Around 1:00.

Q. So that this was your free time, is that correct? A. That's right.

Mr. Belkin: That is all.

CROSS EXAMINATION. (In Rebuttal)

Q. (By Mr. Hinslea): Now, Mr. Weissflog, what watch were you on at the time of this galley episode? A. 10:00 to 2:00.

Q. 10:00 to 2:00. And what time did you go to dinner that day? A. Well, I don't know the exact time. It was around 12:00 or so, something like that.

Q. Who relieved you while you were back getting dinner? A. No one.

Q. Well, now, if you were supposed to stand lookout, someone would relieve you, wouldn't they, if you went to mess? A. If I had to stand lookout.

Q. And where were you that day? Where was the ship? A. It was on the Lakes, some place.

Q. How was the weather? A. Fine.

Q. Now, you eat with the captain and the other licensed officers, do you not? A. Yes.

Q. Is the dining room down below or is it on the main deck? A. On the main deck aft.

Q. And when you leave the dining room, how do you get around to the messroom? A. Walk around the stern.

Q. You come out of the door at the extreme end of the cabin, do you not? A. That's right.

Q. On the fantail? A. That's right.

Q. Then, you have to walk over to the side of the ship, is that right? A. Walk all the way aft, around the fantail, to the port side, which is the crew messroom.

Q. How far would you say that it is from the dining room around to the crew's messroom? A. Oh, I don't think it is more than 100 feet, at the most.

Q. Now, there is no place for a watchman to eat in the messroom, is there? A. At times the watchman ate in the messroom when he was dirty.

Q. But the watchman's place, regular place, is in the officers' dining room, is it not? A. That's right.

Q. So, you went in this messroom while other men were eating, for the sole purpose of talking unionism, didn't you? A. Yes, sir. We also consider the messroom as the recreation room.

Q. While men are eating? A. Yes, sir.

Q. But you did tell me you went in there for the express reason of talking unionism? A. Well, I stopped in there other times without talking about the union. It just happened I spoke about the union.

Q. I see. Adjoining this messroom is the galley, is it not? A. That's right.

Q. There is just an opening without a door between the galley and the messroom? A. There is a door.

Q. But it is always open? A. Generally.

Q. How many men were eating in the messroom when you went in there? A. Oh, about four or five.

Q. And how many women were in the galley department? Two women? A. Two women.

Q. And two men? A. That's right.

Q. These people were trying to clean up, were they, at that time? A. In the galley.

Q. Yes. A. Yes, sir.

Q. And they were serving food in the messroom? A. That's right.

Q. And they were going back and forth, from the galley to the messroom? A. The meal was in the messroom where I was.

Q. And he would carry dishes back and forth? A. Yes, sir.

Q. Now, it is still your testimony that the messroom was considered a recreation room for everybody while meals were going on, is that right? A. Everyone used to go in there. The chief engineer and mates would stop in.

Q. At noon? A. Plenty of times. We would go there and have a session when two or three people were there.

Q. What time of day would that be? A. At the noon meal hour and sometimes at supper time.

Q. How long would the meal last at noon? A. I had a half hour at the noon meal.

Q. On watch you had a half hour? A. That's right.

Q. Where did you get that rule from? A. That's what everyone was taking. No one objected.

Q. Isn't it a fact that—strike that. When a wheelsman is relieved at the 10:00 to 2:00 watch, doesn't he go right back and get his meal, and come right back to the wheel? A. Not immediately.

Q. Well, I mean, he might take care of a few things forward and then go back? A. No, also sits down and smokes, takes a few minutes to relax and smoke.

Q. In the messroom? A. Or in the fantail, if it were nice and warm.

Q. How many stools are there in the messroom? A. I imagine about 10.

Q. Ten. And it is your testimony that the engineers and the mates and the wheelsmen and the watchmen, firemen, oilers, deckhands, would all congregate in the messroom during the noon hour? A. I didn't say that.

Q. What did you say? A. I said occasionally men would come in there and discuss things, sit down; the engineer would often eat in the crew's mess; the second or third

engineers occasionally would eat there when their clothes were dirty.

Q. Did you say the mates went in there? A. They'd go there occasionally for coffee and talk.

Q. You mean they would have their meal in the dining room and go back to the messroom for coffee? A. They'd go there occasionally for coffee and talk.

Q. You mean they would have their meals in the dining room and go back to the messroom for coffee? A. They did that at hours—

Q. I am talking about the noon hour. A. Sometimes they would come in and talk and sometimes issue orders to the men who were to go—

Q. The second mate, would he go in there? A. Sometimes.

Q. The third mate? A. Sometimes.

Q. Would you say there were often 10 or 12 men in there? A. I wouldn't say that.

Q. What is the greatest number of men you saw in the messroom at one time, at the noon hour? A. Sometimes I saw the whole place filled up with people supposed to eat there and one or two men standing in the corner waiting to eat.

Q. And did you also see mates and engineers standing in there? A. Occasionally.

Q. During all this time the cooks were trying to do their work? A. That's right.

Q. Now, there is no talking in the dining room where you ate with the officers, is there, at the noon hour? A. Certainly is.

Q. You have quite a gabfest in there, too? A. Sometimes.

Q. Does the captain take part? A. Yes, sir, certainly.

Q Chief engineer? A. Yes.

Q. What do they talk about? A. Talk about hunting, anything.

Q. And how long do you stay in the dining room talking about these things, hunting, or anything? A. Sometimes you speak before meals: sometimes after, five or ten minutes or so.

Q. You sit there five or ten minutes before you have your meal and talk there, even though you are on watch; is

that right? A. Sometimes we couldn't get in the dining room because there wasn't enough space to sit down.

Q. And you would stand inside the dining room and talk? A. That's right.

Q. Isn't there a place for everyone in the dining room? A. No.

Q. There isn't? A. Nor in the crew mess.

Q. There are three oilers, three wheelsmen, three watchmen? A. Yes, sir.

Q. They are the only unlicensed men that eat with the officers? A. That's right.

Q. One set are always on watch, so they can't eat, isn't that right? A. Well, there is the wheelsman, has to be relieved.

Q. Yes. A. The oiler, is two, an engineer and a mate is four.

Q. What I am getting at is, there is enough space for the two sets of men off watch to eat, isn't that a fact, in the dining room? A. No.

Q. There isn't? How many chairs are there at the dining room table? A. I think there's about 10, I am not quite sure. Ten to twelve.

Q. Ten to 12? A. At the most, yes.

Q. How many men are there off watch to come in and eat? A. Well, there can be two oilers eating, there can be three watchmen—

Q. How can there be three watchmen. One watchman is on watch, isn't he? A. He doesn't need to be relieved.

Q. You mean the watchman on watch comes back with the other two watchmen? A. That's right.

Q. That's five. A. That's two oilers, three watchmen, two wheelsmen.

Q. That's seven. A. Two mates, captain, two engineers and the chief engineer.

Q. All right. Now, is it your testimony that when a watchman has work to do he still comes back with the other two watchmen? A. When he is given his mealtime, he can leave his work, if it is not lookout to be relieved, or some other important work.

Q. And it is your testimony that the men that can't sit down stand around in the dining room and gossip, wait for the other fellow to get up? A. At times, yes.

Q. And it is your testimony at the time of the deckhouse episode that you were not on the 10:00 to 2:00 watch? A. That's right.

Mr. Hinslea: That is all.

Mr. Belkin: That is all.

Trial Examiner Leff: Witness is excused.

(Witness excused.)

Mr. Belkin: The Board, at this time, if the Examiner please, at the request of the Respondent, is prepared to offer in evidence the contracts of the National Maritime Union with various companies that operate freighters or other steamships on the Great Lakes. Of course, we have no copies at this time, and we ask leave to substitute copies.

Perhaps we had better mark this all Board's Exhibit 8.

Trial Examiner Leff: Well, if you will mark out the portions of the contracts which you consider relevant, then I'd suggest you only supply copies of those portions.

Mr. Belkin: I think that is a very wise suggestion.

Trial Examiner Leff: In fact, I don't know why we need the entire contract in evidence.

Mr. Belkin: Mr. Hinslea might select out whatever sections he feels are pertinent.

Trial Examiner Leff: If it is not too long, perhaps we can read it into the record. I think that would be acceptable by me.

Off the record.

(Discussion had off the record.)

Trial Examiner Leff: The hearing is in order.

Mr. Belkin: At this time, if the Examiner please, I would like to offer in evidence what all the parties have agreed is a typical NMU contract. It is entitled the Nicholson Agreement, and upon its face bears the statement that it was made on the 30th day of April, 1943. I take it this will be marked for identification.

Mr. Hinslea: A typical Great Lakes Contract.

Trial Examiner Leff: Do you agree it is a typical contract for Great Lakes bulk freighters, Mr. Ray?

Mr. Ray: We agree, and we have no objection to it.

Trial Examiner Leff: All right. And you will point out, either in your argument or in your brief, the clauses that you contend support your position, will you not?

Mr. Ray: Yes.

Trial Examiner Leff: Thank you.

Mr. Belkin: I think, Miss Reporter, that this should be marked Board's Exhibit 8.

(Thereupon, the document above referred to was marked Board's Exhibit 8 for identification.)

Mr. Belkin: The Examiner has permitted the waiver of copies, but I shall attempt to get one, anyway, for you.

Trial Examiner Leff: Thank you.

Board's Exhibit 8 is received.

(The document heretofore marked Board's Exhibit 8 for identification was received in evidence.)

Trial Examiner Leff: Now, does the Board have any further witnesses?

Mr. Belkin: I have no further witnesses.

Trial Examiner Leff: Is there any further evidence that any of the parties wish to adduce upon any of the issues in this proceeding?

Mr. Ray: None on behalf of the Respondent.

Trial Examiner Leff: Any on behalf of the Board?

Mr. Belkin: No.

Trial Examiner Leff: And, I take it, none on behalf of the Union?

Mr. Lawrenson: Well, we had tried to get in touch with Shartle.

Mr. Belkin: I just learned that Shartle had left on the Steamer Alexandria, for Europe—or, rather, on the Santa Maria, and is on it at this time.

Trial Examiner Leff: Then, you have no further evidence?

Mr. Belkin: No further evidence.

Trial Examiner Leff: There being no further evidence on the issues in this proceeding, I am now prepared to hear motions and oral argument.

Mr. Belkin: First, I should like to state, on behalf of Mr. Rosenfeld, attorney for the NMU, that owing to the pressure of business, he has not been able to appear at this hearing today, but asked leave to file a memorandum brief with you within seven days.

Trial Examiner Leff: Leave is granted.

Does the Respondent intend to file a brief with the Trial Examiner?

Mr. Ray: The Respondent does, but the Respondent will address an application to the Chief Trial Examiner for an extension of time beyond the seven days within which to file it.

Trial Examiner Leff: Very well.

Does the Board intend to file a brief?

Mr. Belkin: Well, I am trying another "C" case, Mr. Examiner. I am preparing one, however, right now, and I am pressed. But I shall make every effort to file a brief in order to be of assistance to you.

Trial Examiner Leff: Thank you.

All parties have seven days from the close of the hearing to file briefs.

Off the record.

(Discussion off the record.)

Trial Examiner Leff: On the record.

Are you ready to proceed with your oral argument, Mr. Belkin?

Mr. Belkin: Yes, I am.

It is a little difficult to make a summary of all the facts in this case, because of the length of the hearing and the fact that the record has come in sporadically. Nevertheless, I think I can sum up the theory of the Board.

The 8 (1) allegations of the Board rest upon the evidence which it produced at the hearing.

Mr. Ray: 8 (1), you say?

Mr. Belkin: Yes.

This evidence, I think, showed conclusively that during the months of April, May and June, of 1944, prior to an election conducted by the Board aboard the vessels of the Respondent, there was a wide-spread pattern of conduct which seems to have been followed almost identically by various officers of the Company aboard different ships.

For example, on the Peter A. B. Widener, we find that Captain Lehne, Chief Mate Eckstrom, Chief Engineer Hunger hounded the union organizer, Joseph Babin, until he left the ship. The comments of Eckstrom and Hunger to Babin were made in the presence of the crew with the obvious purpose of affecting their ballots.

Of course, the fact that the union organizer was compelled to leave the ship certainly was coercive and intimidating, not only to the individual concerned, but to all the crew.

Aboard the Morse, Captain Gerlach, Chief Mate Herbert Todd, and Chief Engineer Haller gave union organizer Arno Weissflog the same type of treatment, adding physical violence. Their treatment of Weissflog occurred in the presence of members of the crew.

These men attacked union policies such as rotary shipping and equal treatment for Negroes, the latter in an attempt to stir up latent racial prejudices, and the former to create a fear that if the union was selected as representative of the men, many men would lose their jobs.

In addition—

Trial Examiner Leff: I want you to elaborate on that.

How do you contend that the racial issue which you say was injected by supervisors of the Respondent was violative of the act? In other words, interfered, restrained, and coerced the employees in their rights to self-organization?

I am not quite clear, or sure that I understand your theory of it.

Mr. Belkin: The theory is this, if the Examiner please, that the Company entered the lists here, as an active antagonist of the NMU; that, as the evidence shows, the NMU did not put any of its pamphlets of the Jim Crow issue on board the ship, but someone put them aboard the ship, and I think the only inference you can draw is it was the Company.

Trial Examiner Leff: Why?

Mr. Belkin: Because on the Great Lakes and amongst the complement, particularly of the Pittsburgh Steamship Vessels, there seems to have been a considerable number of men who resented and feared the coming of Negro coworkers.

Now, the theory of the Board is just that.

Trial Examiner Leff: Well, let's hit that point first.

We find that an NMU pamphlet, admittedly a pamphlet prepared and issued by the NMU, was distributed aboard the ship.

Now, you want the Board to infer that it was the Company who distributed that.

The Company has denied that it made such distribution. On the other hand, the NMU denied that it distributed that pamphlet.

Do you contend that the only reasonable inference that may be drawn from those circumstances is that the Company must have done it; that is, if the NMU did not?

You must recall that there was another Union that was a party to the election.

Mr. Belkin: Yes, I do. I understand that.

Let me say this to you, Mr. Examiner, if it were true that these pamphlets had appeared on board the ship and the men—by that I mean the unlicensed personnel—eligible to vote in the forthcoming election had discussed it amongst themselves, the Board would make no allegation on the basis of this pamphlet.

But, not only was the pamphlet distributed aboard the vessel, but on every vessel from which we have had the opportunity to see either the officers of the Company or the unlicensed personnel of the Company, I say to you, on every such vessel there is evidence that the Board has adduced which shows that the officers took this issue up and constantly raised it.

On one vessel we had the captain saying to William Lee, "We are going to get a Negro—" I think the name was "Nigger, to sleep with you."

On another vessel, the captain, according to credible testimony of one of the Board's witnesses, said that he hated to give orders to Negroes. Whether one may infer that he did or did not, I don't know. But the statement, itself, was an attempt to raise the issue.

Trial Examiner Leff: Well, do you say that it is coercive?

Mr. Belkin: I think it is very coercive, when you consider the kind of person that was eligible to vote in the election, and the conditions under which these men worked.

You see, they were, as testimony by the Company's own captains has shown, some 36 in number, generally. That crew is the entire complement of men aboard the vessel. They lived at rather close quarters. There is bound to be a certain reluctance in many men in America today, whether justified or not, to permitting Negroes to live with them.

Trial Examiner Leff: Well, isn't it a basic principle of the NMU that it is a policy of the Union to be opposed to racial discrimination and Jim Crow-ism?

Mr. Belkin: We grant that. And the Union has never denied its policy, and the Union still advocates its policy. But the Union was attempting to win an election, and we maintain the Company was attempting to defeat it. The Union did not push its Jim Crow Fight on the Great Lakes. The Company threw the issue into the fight.

I say to you that the Company had no right to even step in as an antagonist to this Union. Under the Act, the employees were to be permitted freely to choose their own representative. Any such issue put into this conflict was bound to operate to the detriment of the NMU.

Furthermore, I maintain that if it were only one instance in the entire pattern of conduct by the Company, standing alone, I would say, well, it wouldn't be enough to justify a finding of 8 (1). But in addition to other acts of the Company, I think it has real importance.

Trial Examiner Leff: While we are on that subject, and so I won't have to interrupt your argument any further—

Mr. Belkin: You may interrupt as often as you like.

Trial Examiner Leff: I'd like to know what your position is with respect to the Bradley pamphlet.

Do you contend the evidence in the record supports an inference that that was issued by the Company?

Mr. Belkin: Yes, I do.

Trial Examiner Leff: And if so, on what do you base that contention?

Mr. Belkin: I'd like to tie it up with the Ferbert letters, too.

Trial Examiner Leff: Well, tie it up anyway that you want to.

Mr. Belkin: All right.

It is the Board's contention that the Company, in its active campaign against the Union, while attempting to stay within the American Tube Bending Case, clearly was over the line. Through its president it sent out to the ships before the election these letters; first, this letter on May 2, and then the letter on June 1. It was raising issues that it felt could be used against the Union. There is no other purpose for issuing them.

Then, the Bradley letter appears and the NMU Fights Jim Crow appears all before the election.

The Bradley pamphlet was bound to be harmful for the Union.

Put them all together; add to it the coercive acts of the officers of their vessels, and the whole thing makes a very complete pattern of behavior.

Trial Examiner Leff: What are the coercive acts?

Mr. Belkin: Well, I have already suggested to you the acts of Captain Lehne, Chief Mate Eckstrom, and Chief Engineer Hunger on the Widener, and Gerlach, Todd, and Haller on the Morse. I am about to tell you some of the others.

Trial Examiner Leff: All right. Go ahead.

Mr. Belkin: As regards the Morse, Captain Gerlach attempted to influence the boy, Ralph Zmrazek, so that he would vote against the Union.

On board the Bunson, and later the Cornell, Captain Lawless and the Chief Engineer denounced the CIO and its leadership to the members of the crew.

Pressure upon the crew was so strong on board that vessel, the Cornell, that one of the men named Hiers, asked the Union representative to withdraw his name from those authorizing the Union to represent them because he was afraid he would lose his job or chances of promotion.

On board the Horace Johnson, Captain Wallace attempted to find out what members of the crew were members of the Union, and attacked policies of the Union such as equal opportunities for Negroes, and rotary shipping, in the presence of crew members.

There, we get the pattern, again, coupled with these letters, coupled with the Bradley pamphlet, coupled with the NMU Fights Jim Crow.

He further interrogated men as to whether they had been to the Union Hall.

First Assistant Engineer Anderson, customarily, in the galley, in the presence of members of the crew would attack the Union and point out how expensive it was to pay dues to it.

Captain Wallace also added the threat—and this was a very, very important threat to these men, and highly coercive—that if the Union came in the unlicensed personnel would lose their bonus. And he announced at one time to the crew that George Anderson, the union organizer, would be fired at the first opportunity.

Aboard the William J. Filbert, Captain Brinker engaged in violent discussions with Union organizer William Lee on many occasions, verbally brow beating the latter, and denouncing policies of the Union, duplicating the statements made by the other officers on rotary shipping and Negro opportunities.

I say to you, Mr. Examiner, that, again and again, on ships miles and miles away from each other, at one port or another in the Lakes and during the three months prior to the election in June of 1944, we find practically the same kind of statements being made about the Union to members of the crew by officers and licensed personnel of the Company. If that doesn't show a pattern, I don't think any pattern ever will be shown.

Captain Brinker went so far as to tell Chief Engineer Curry to fire Lee, and although Curry is available to the Respondent, he has not been brought forward to testify in denial of this statement.

Aboard the McGonagle, Captain Penzenhagen told his crew if the Union won, the men would not have any voice in determining with what officers they would sail; they would pay for a bunch of racketeers.

Trial Examiner Leff: Do you consider that statement coercive, in itself, or statements of a similar kind?

Mr. Belkin: I think that a statement that they would pay for a bunch of racketeers is a coercive statement.

I don't think the other standing alone would be, but I think in connection with the other matters occurring aboard the ship that it does become coercive.

Second Assistant Engineer Benson, aboard this ship, on many occasions in the presence of the crew made statements like these other men have made, as cited above by myself, concerning Negroes and rotary shipping.

On the Irving S. Olds, Howard Shartle, the union organizer, was discharged within a month of his being hired aboard the ship, although the discharge created a hazardous condition aboard ship since it left the ship without its full complement of A.B.'s. Respondent alleges that Shartle was discharged for cause, and cites the fact that he was tardy twice during the fitting-out season, and before the boat sailed, and also that he had been slow in painting the ship during the fitting-out season, and that, finally, he failed to operate a winch properly.

The charges fall to the ground when we examine the showing made from the cross examination of the Respondent's own witnesses that Shartle's first tardiness was due to the fact that he visited the Company doctor; that his alleged slowness in painting brought no objections from his own painting partner, upon whom a heavier burden would have fallen; that in neither case was any complaint made to the captain.

As to the winch incident, the Respondent's own witness, Chrobak, I believe, testified that since the Olds was a new type vessel, completely electrical, its winches were different from those normally operated and that the crew received special instructions in their operation—and today Captain Murray made the same statement—and that other seamen who had made mistakes in their handling had not been discharged, and that even after Shartle's alleged miscontrol of the winch occurred, he was permitted to go on operating it, and, *a fortiori*, no complaint was made to the captain.

As a matter of fact, by the testimony today, the decision to fire Shartle was made more than a week, or approximately a week from the time when he failed to properly operate that winch.

In view of these facts, and especially in view of the fact the ship not only was short its normal complement of A.B.'s, but was shorthanded on the whole, during the entire spring of 1944, it is inconceivable that there could have been any other cause for Shartle's discharge other than his union activities.

And just examine the testimony of the Respondent's witnesses in this connection. It is a mass of inconsistency and evasion.

Here, we have Captain Murray testifying today. He testified that he believed the men were given a reasonable time to learn to operate a winch. He testified that he didn't know that Shartle—well, by the way, if the Examiner please, there has been testimony by several of the Captains and officers that they didn't know that such and such a person was a union organizer.

I submit that it is absolutely incredible. In fact, we have Captain Murray, one of the finest captains of the Respondent, as evidenced by the fact he had one of their crack vessels; as evidenced by the fact he was brought for-

ward as an expert witness at the War Labor Board hearing in 1943; a man who sailed the Lakes for some 40 years, who was able to testify about the rotary shipping or hiring hall versus the normal or customary procedure of the captain choosing his men as he pleased, denied that he knew anything about the NMU and that he was familiar with its policies, and that, therefore, he never had heard about anybody being the union organizer aboard the ship.

Why, it is incredible!

The Second Mate aboard this vessel, the Olds, testified that he never at any time knew that Shartle was a union organizer. Yet, as I said before, we have had witnesses of the Respondent, such as Captain Gerlach who said, and I quote:

> "I found out about so-and-so being a union organizer. It is a small boat and things get around. You pick up a drop here and a drop there."

I think that particular point requires no further elaboration.

I think that without question aboard every vessel of the Respondent where there was a union organizer, and I think we can assume that there was a union organizer on almost every vessel, the captain and other officers knew, within a week of the union organizer's shipping aboard that ship, that he was a union organizer and that he was attempting to organize men. The very fact that there are men hostile to the NMU aboard the ship, as evidenced by the vote in the election, would indicate that these men would soon inform their officers.

I honestly believe, Mr. Examiner, that more 8 (1) evidence was adduced through the cross examination of the Respondent's witnesses than through the Board's. We found time and time again that witnesses of the Respondent told about conduct in violation, violative of the Act.

I attempted to make a summary of all these facts as brought out by cross examination, but because the record has been tardy, I haven't been able to do that. I shall attempt to do it in my brief. However, I think that some of the things that were brought out could be stated by me at this time.

Captain Gerlach, himself, as you recall, in anguish cried, "Do I have to tell what was said," when we ques-

tioned him about what the waitress had told him, and finally admitted that she told him that Weissflog, the union organizer, was speaking in the mess to the men concerning the Union, and that, then, he went in and pulled him out of the room.

Mr. Ray: That is not the testimony.

Mr. Belkin: Gerlach didn't testify that he pulled him out of the room, but certainly it was his testimony that the waitress told him that Weissflog was talking about the Union.

Further, Captain Gerlach denied that he knew anything about Unions, that he knew anything about their organizational campaigns or programs or about the election. His testimony, in sum, makes it clear that not only did he know about these things but that he actively opposed the Union, and by his treatment of the ship's organizer, both physically and otherwise, not only hampered the campaign of the Union but by the example of his treatment of Weissflog, intimidated and coerced each member of the crew.

The first witness of the Respondent, Philip Ambrozicy, testified he wasn't present in the messroom much of his time aboard his vessel, and he might not have been present when his 8 (1) conversation took place. Further, he testified what conversations he had heard took place in July and August. As a matter of fact, Weissflog was off the boat in July or late in June.

Aboard the Bunson, we find two of the younger officers, Third Mate Carr and Third Assistant Scharmin staging a little dramatic scene for the benefit of the crew on many occasions.

Both of them objected to the Union policy and rotary hiring. Yet, time after time, though they had already discussed this in their own quarters, they held a conversation in which they denounced the rotary shipping in the presence of the crew.

Trial Examiner Leff: Do you intend to cover these things in your brief?

Mr. Belkin: Yes.

Trial Examiner Leff: It is not necessary to cover them now, unless you want to.

Mr. Belkin: No. But you understand the theory of the Board, I take it.

Trial Examiner Leff: There are a couple of other things I want to hear about. First, about the Bradley pamphlet. You haven't come to that.

Mr. Belkin: First, let me finish one more thing.

Trial Examiner Leff: Yes.

Mr. Belkin: As to the question of how wide-spread the effect of any 8 (1) conduct by the Respondent's officers has been, as the Respondent's own witnesses testified, many of the officers involved in this case have transferred to other vessels; with them have often gone some members of their old crew each season to new vessels.

If the Trial Examiner and the Board find that there has been a violation of 8 (1) I feel that any finding they may make should cover the entire fleet of the Respondent, because of this very fact.

Trial Examiner Leff: You mean that the order should cover the entire fleet, as far as posting provisions are concerned?

Mr. Belkin: Exactly.

Trial Examiner Leff: With respect to the Bradley pamphlet, I want to know two things. First, in your opinion, does the evidence support a finding that that pamphlet was distributed by the Company or at the instance of the Company; and secondly, assuming it does, in what respects, do you contend that that pamphlet constitutes 8 (1) conduct?

Mr. Belkin: I think it is on the same footing, as I have said before, Mr. Leff, as Board's Exhibits 2 and 3; that in and of themselves, they may be within the Act, may be within the law as the most recent decisions have construed the law. But, taken together, and taken with the entire conduct of the Company and its agents, its supervisory employees, they are violative of the Act because, putting the whole picture together, they constitute a definite bar to free choice by the unlicensed personnel of these ships.

Now, you take any one of these things, and standing alone it might fall. But you put them together, and you have got a different picture entirely.

Trial Examiner Leff: It is your contention, in other words, that the entire pattern of conduct constitutes coercion, even though certain segments of the total pattern might not, alone, constitute such coercion?

Mr. Belkin: That is true.

The most coercive things in the conduct of the Company, as I see it, were attacks on Union policies, treatment of organizers, culminating in discharge, at the start, of one Union organizer, Shartle.

I think that goes right to the heart of the Act. When you do that you break a Union. And that's what happened here.

Now, the bonus is a very important thing. These men counted on that bonus, and here we find a captain who points out that if the Union gets in they are going to lose their bonus because the bonus was in the unilateral power of the Company to decide. It wasn't a bonus that was a right of the men. It was solely within the power of the Company to give or not to give, as it saw fit.

Trial Examiner Leff: That was an isolated instance, was it not? That wasn't a pattern of that kind of conduct appearing aboard all ships?

Mr. Belkin: It is true that we adduced evidence only on one ship. But I maintain that since you found certain conduct on one ship repeated on others, that if this was not a steamship case, it would be very easy to show that there must have been repetition of this on other ships of the fleet.

I maintain, again, the very fact that you found similar attacks on Union policies, on Union leadership, on some vessels of the fleet independent and isolated from one another, physically, that you found it on all of them.

Furthermore, you found on at least one ship—I am searching my mind to see whether it occurred on more than one. You found an officer, I believe Captain Penzenhagen who said to the men, "If the Union comes in, there's certain privileges that I give you you are going to lose, such as being able to stand in sheltered places during stormy seasons, and certain other beneficial treatment."

Well, that's the theory of the Board.

Trial Examiner Leff: Is Respondent prepared to proceed with oral argument?

Mr. Hinslea: Yes. Mr. Examiner, Mr. Ray and I have been a little more fortunate than Mr. Belkin in that we have sort of divided it up.

Mr. Belkin: Pardon me. Before you start, I would like to make a motion. I intended to make it before.

Would you permit me to make it at this time?

Mr. Hinslea: Yes.

Mr. Belkin: I want to move to conform the pleadings to the proof in formal matters, such as dates and other things like that.

It is a customary motion of the Board.

Trial Examiner Leff: Any objection to the motion?

Mr. Ray: No.

Trial Examiner Leff: The motion is granted.

Mr. Belkin: I am sorry for interrupting you, Mr. Hinslea.

Mr. Hinslea: I don't know, Mr. Examiner, whether it is the practice of the Board or whether a motion to dismiss on the evidence is in order at this time, but just to protect the record—

Trial Examiner Leff: It is in order and it is customary.

Mr. Hinslea: We will so move, and then our argument that we make will be in support of our motion to dismiss.

Trial Examiner Leff: Yes.

Well, I usually reserve decision on motions of that kind, but I will hear oral argument.

Mr. Hinslea: Yes.

Now, the position of the Company or Respondent is that most of the things that we thought pertinent in an 8 (1) hearing we have attempted to produce proof to the contrary in rebuttal.

Unfortunately, one witness that we had hoped to produce, Captain Wallace, is in such physical condition that he can't testify.

There are some witnesses that we have not produced for the reason that we did not think the testimony offered as to them was entirely pertinent.

Our position is this, that, even assuming all or part of what has been produced by the Board and by eight of its witnesses were true, it does not or cannot represent the position of the Company. The mere fact that eight men testified as to isolated statements that have been made by some 10 or 15 officers certainly does not create a pattern for every supervisor in the Company's employ, and certainly doesn't constitute an anti-labor or union attitude on the part of the Company.

The testimony given today by Mr. Garbutt was that there are almost 600 supervisors in this fleet. There are 74 ships. And out of almost 600 supervisors, I think 597, to be exact, there are very few officers that are involved.

There has been a lot of fly-specking and I, after due consideration with Mr. Ray, do not feel that calling a man names or using a little profanity constitutes anti-union activity.

So, we have come down to the more serious accusations, like the officers of the Steamer Morse and Cornell and Filbert and Widener.

I might say, in passing, that as to the Steamer McGonagle, the captain of the McGonagle was not produced and he was not produced for this reason, that the things that he is alleged to have said, like "You will have to stand your watch out in the weather," and "You will get your rest period cut out and no coffee, no coffee time," was pure, absolute, unadulterated hearsay. The witness testified that this captain made these statements in the deckhand's room between the hours of eight-thirty and midnight, and when he was finally confronted, on cross examination, he said he wasn't there and somebody else told him about it.

Now, I realize that the Examiner is not a sailor, but he certainly knows enough about sailing to know that a master of a large ship, and I think the testimony was that the ship was moving through ice, the captain of this large ship is not going to spend four hours of his time, when the ship is moving through ice in the ice season, sitting down in the deckhand's room talking about Unions.

And the same thing goes for the bonus. I understand that, by my recollection of it, the testimony shows that that was pure hearsay.

Now, coming to the Morse, there has been a lot of finger-pointing at Captain Gerlach. Captain Gerlach might be a good navigator but he wasn't at his best as a witness. I find, in my experience, that most good skippers don't make good witnesses. But he tried to tell the story in his own way.

These witnesses did not come in to the Examiner and say, no, no, no, no, we didn't do that, we didn't say that, we deny all this. They frankly admitted that they had had conversations, and then they explained the conversations.

This Zmrazek was a young boy, a country boy. The Examiner remembers that the Captain had a little trouble with his hair tonic, and the Captain called him on it.

Now, does the Board contend that none of these country boys have ever asked a supervisor what he thought about a Union, solicited his advice? And the Captain gave his advice.

Now, take Weissflog. The Examiner has had enough experience in these Union cases to know that there are organizers in factories and shore plants and on ships, that are very, very enthusiastic. And there comes a time when a supervisor has a right to step in. Now, Gerlach says that he had told Weissflog that he had no objection to his organizing when he was off watch. And there is no testimony that he was interfered with off watch, except there is one dispute; the Captain saying he was on the 10:00 to 2:00 watch on the firemen's room episode, and Weissflog comes along and says he was on the 2:00 to 6:00 watch.

But as to the messroom, there is no question that Weissflog was on watch and on duty and the testimony of Gerlach was that the waitress came in and said that, "this man is out there bothering us, interfering with our work."

There was no testimony, as Mr. Belkin is now suggesting, that he came out and said that Weissflog was talking to the men in the messroom. That has come up for the first time today. But the original testimony is that he was standing in the doorway between the messroom and the galley talking to the cooks and they were trying to get the work done.

Now, I submit it is not an anti-union act for a master of a ship, in order to have discipline and protect the morale on the ship, to put a man out of the galley when the work is going on. And I say the same thing as far as the firemen's room is concerned.

Now, they say Weissflog was being pushed around. Now, Weissflog was very assertive himself; he was very aggressive. He is an aggressive witness. You can see it to look at him.

Now, this thing about coming back late. There was a lot of testimony about that. Why shouldn't a man be disciplined when he comes back late. It was a perfect explanation. Weissflog was spoken to. The engineer spoke to

his men and told them about coming back late. Any man at any ship is reprimanded on coming back late. And the testimony is they reprimanded the other fellow.

These ships were trying to do a job during the war, trying to carry iron ore and every minute they were held up prevented somebody from shooting a few more boats.

Now, take Lehne, on the Widener. All he ever said to a witness is, as the witness says, "I don't want you interfering with the men on the watch."

Isn't that a reasonable order? Is it interfering when you say, "You can't organize when these men are on duty; I have got to get the work done"?

If the Union can put an organizer on the ship and hold the men up on the deck duty, then, by the same token, they can talk to a wheelsman at the wheel on the Detroit River or go down and talk to the oiler while he is on duty. It doesn't stop on the deck.

So, I say there is some place along the line where organization begins and organization ends.

Now, take Lawless, on the Cornell and Bunson. Is it wrong to call a meeting of the crew for the sole purpose or original purpose of advising these young fellows of safety or how to handle themselves on the deck or in the room, and then because he had been to a Company meeting the day before in Cleveland and was told that a man could join or was not required to join the Union, there was to be no discrimination, say that to the men?

There has been more than one witness who came before the Examiner and testified, and his testimony wasn't disturbed by cross examination, that the Captain, in this case made only one statement and said, "I am not against the Union, because here is a man that is a Union man, Vogt, and I hired him last season."

Is that anti-union?

There is no proof that the engineer went along and agreed with the Captain. He didn't talk unions. He talked about the work.

Now, take the letters that Mr. Ferbert wrote. Yes, it is true that these letters were written within the bounds and limits of the Steel Bending Case,—

Mr. Belkin: Tube Bending.

Mr. Hinslea: Tube Bending Case, which is recognized by the Board. And the only question in those letters

before the Examiner is, is it a misstatement to say that the Government controls wages?

Now, the Board and the Union have been very fussy about the words used, the language used. After all, it is the meaning. Everybody, I don't care whether he is a sailor or lawyer or a plumber knows that when anyone negotiated a wage or anyone tried to give an increase in wages, it was finally approved or disapproved by the Government.

Trial Examiner Leff: What was the purpose of the Company writing those letters?

Mr. Hinslea: Why, to state their position, state their position on this election, that we felt—

Trial Examiner Leff: Well, do you consider that the Company was a contestant in the election?

Mr. Hinslea: Oh, no, no. Not for a minute. And we thought that by reason of the liberties that were granted to the Company, that they were in their rights to write the letter. There was no intent in any way to influence or sway the men either way, and we stand by the letter.

As you know, the Board—

Trial Examiner Leff: Well, I mean, you concede that the purpose of the letter was to influence the men, even though you don't concede there was any intention of coercing.

Mr. Hinslea: Oh, no, no. I never admit that. 99 percent of that letter, Mr. Examiner, goes to the election and the importance of voting.

Now, a Company is not influencing people when they say the election is coming on and how the election is going to be conducted.

Trial Examiner Leff: What was the purpose in referring, in the letter, to the rotary hiring system?

Mr. Hinslea: Because it distinguished from the present system of the Company and what the Union was advocating and what the men would have if they prevailed—it would be that system—and if it didn't.

And they were asked to give that consideration in voting. The same in the Tube Bending. There are certain things they have to give consideration before they cast the ballot.

Trial Examiner Leff: Isn't the system that prevails a matter of bargaining? Is there any certainty once the Union wins you are going to have that particular system?

Mr. Hinslea: I don't know of all systems, but it has been true on the Lakes. The unions are insisting on a definite pattern. They don't change. As the Examiner found today, all the patterns are the same as far as the hiring, and they don't deviate a bit on the rotary hiring system.

Now, our position on the rotary hiring system is it is a known fact the captains and some of these mates were quite interested in whether they could take their men or couldn't take their men. That is quite important here on the Lakes. These men that sail a full season with these mates and they are good sailors, it is quite important to these mates that they can take their men with them.

The Union doesn't contend, or the Board doesn't contend that if a man lays up a boat he could go to another ship in the fleet. There is a decided distinction between the Union's policy and the Company's policy.

The Union has what I call ship seniority. You are entitled to one ship, and that's the ship they laid up. In the Company, you can go to any of the ships if there is a vacancy. That was quite important.

Now, this young fellow, Carr, and this other fellow on the Bunson—

Trial Examiner Leff: Before you get into this other evidence, I'd like to hear your position with respect to the pamphlet "N.M.U. Fights Jim Crow," and also with respect to the Bradley pamphlet. You have heard—

Mr. Hinslea: Yes, I have. And I say that the burden is on the Board to show that it came from the Company.

Trial Examiner Leff: The Company denies, does it, that it distributed the N.M.U. pamphlet?

Mr. Hinslea: It denies that it distributed the N.M.U. pamphlet and denies that it distributed the Bradley pamphlet, and we attempted to show it came from other sources.

As to the Bradley pamphlet, it is undisputed it came in the mail in brown envelopes with Bradley's return address on it. There were no names, but it was addressed to the six to ten, which is quite customary for even the Unions to address people in that way.

The N.M.U. pamphlet came in a white envelope. One witness said it had a box number. He is the only one. But they all agreed it came addressed to the men. And the Company denies it sent the pamphlet, and we attempted to show in the only way we could that the Company did not send it by producing the woman who has charge of all the mail for the Pittsburgh Steamship Company.

As to the Bradley letter, while the Company denies it sent the letter, I submit I read it and I submit to you there is nothing in the letter that is at all influential either for or against. It is a speech, as I understand it, that was made in answer to a charge that was made by the Secretary of the Union.

There were two collisions out here in the Lakes, and some men were lost, and an accusation came out by the Secretary of the Union that if they had the proper kind of unlicensed personnel—I suppose inferring if hired from the N.M.U.—the collision would never have happened. And there was a castigation of the Coast Guard, and Bradley, who happens to be on the Merchant Marine Committee and a member of some kind of a board in the Coast Guard Academy, had made the speech before the House.

Trial Examiner Leff: I don't recall whether the evidence discloses whether that pamphlet was sent to seamen on board the vessels of other fleets or not. Is there any evidence in the record?

Mr. Belkin: No.

Mr. Hinslea: There is no evidence of that at all.

Now, as to the treatment of the organizers, take Babin, on the Widener.

I assume that the Board is going to argue that he was pushed around because he was an organizer. Now, take this fellow Eckstrom. We didn't produce Eckstrom, the Mate. All he did was take a tarpaulin away from him one day, and he did something else in the windlass room.

Now, that's not unusual with a sailor for the Mate to come along and, if he sees he is not doing the job right, to straighten him out, whether he is an organizer or not.

Take Babin going down in the engine room. The Chief has testified there is no reason for Babin or anyone else to be in the engine room. Notwithstanding, he went down and had chats with the oiler and passed communication while both these men were on watch.

I don't see that that is rough treatment on anybody's part.

Lehne, I can't see that he pushed the organizer around. He had only one conversation with him up in the room where no one was present, and Lehne told him he could organize if he didn't interfere with the operation of the ship, but he couldn't organize while on watch and couldn't drive the men off the ship.

Is there anything wrong when a Master or Chief Engineer finds an aggressive organizer is driving men off the ship, to speak to the organizer?

People were hard to get in 1943-44, and should the Master sit by and watch an organizer run men off the ship and quit an hour before the ship is unloaded?

We produced one witness who testified as to why he got off the ship. And he went off an hour before and told why he was getting off.

Now, if the Union is allowed to do that, if the Union is allowed to talk to the men on watch, as I say, they can go up and talk to the wheelsman, they can talk to the oiler, to any one of the unlicensed people on watch, wherever it is or whatever time of day or night it might be.

Now, it just is inconceivable to me for the eight men to take a big fleet of this kind and make general accusations.

It is not difficult for all to join in a chorus and say, this captain said they were Communists and nigger-lovers. That can be universal or unanimous, as well as any other kind of name called. It was just name-calling, and I don't think that the isolated remarks of these people constitute a pattern.

And, after all, these men are not on trial. It is the Pittsburgh Steamship Company. And in considering this case, Mr. Examiner, we point out to you there is no history of anti-labor attitude on the part of this Company.

Mr. Lawrenson admitted today that they started a concentrated drive on the Pittsburgh Steamship Company in 1943. There was never an unfair labor practice charge against them in 1943.

They filed a petition in '43. The Company consented to an election, but the election could not be held because five or six of the ships had laid up and the crews were gone. So it was put off. And early in the spring, I think April, an-

other meeting was had, and again the Company consented to an election. The date was set, and the Union was given until June 6, I suppose to continue their organization and have the election. And at no time has this Company ever been found guilty of any unfair labor practice.

I think in 1944 there were two charges, one charge in addition to the Shartle, charging the Company with unfair labor practice, and nothing was ever heard about it. I assume the field examiner made his investigation and found it was wrong.

Then, the Shartle case was lifted from the ground in 1944 and slapped into this case in 1945.

So, I just say that it is wrong.

Trial Examiner Leff: Surely you don't contend that the Board is precluded from—

Mr. Hinslea: Oh, no.

Trial Examiner Leff: —finding unfair labor practices in one proceeding simply because there was no prior proceeding in which unfair labor practice has been found?

Mr. Hinslea: No. I understand there is no statute of limitations on unfair labor practice charges.

But, if you will take all these statements, and then take the answers of the officers and put them all together, and even if they are 50 percent true, Mr. Examiner, it doesn't represent the attitude of the Company and can't be construed as an anti-labor act.

Now, Mr. Ray, if you have anything—

Trial Examiner Leff: I assume you will address your remarks to the Shartle discharge?

Mr. Ray: That's one of the things, Mr. Examiner.

Trial Examiner Leff: I think we had better give the Reporter a rest.

(Recess had.)

Trial Examiner Leff: On the record.

Are you ready to proceed?

Mr. Ray: Mr. Examiner, the proof with respect to the N.M.U. pamphlet is that the pamphlet was aboard the vessel and that the Pittsburgh Steamship Company did not send the pamphlet aboard the vessel.

The Trial Examiner has suggested very aptly that with the presence of another union, the inference that the Company did send it is not a proper one.

But, aside from the fact that the Company did not send the pamphlet aboard the vessel, it seems to me that this N.M.U. pamphlet typifies the illogical stand that the Board has taken throughout this case. How can the Board logically urge that a pamphlet prepared by the National Maritime Union and used as literature could possibly constitute an anti-union statement, irrespective of who sent it aboard? The very purpose of the pamphlet is to further the National Maritime Union. And for the Board to urge to you that the presence of the pamphlet aboard a Lake vessel constitutes an anti-union activity is simply the essence of lack of logic.

So, it seems to me it is unimportant how it got there. It couldn't possibly constitute an anti-union or coercive activity on the part of anyone, because it is the Union's own literature, and it was performing the very function for which it was printed.

Trial Examiner Leff: Well, suppose it weren't printed for distribution in the Great Lakes area? Do you think it would be proper for the employer—I mean, just assuming, hypothetically, that the employer sent it. Do you think it would be proper for the employer to inject an issue which the Union, for reasons of its own, wants to keep out of the area?

Mr. Ray: I don't think the Company would have a right to inject any issue. But there is certainly no evidence in this case that the purpose for which this pamphlet was printed, that it was to be confined to any area or wasn't to be used in any situation.

There is a great number of Negro cooks on these vessels, and certainly one of the objectives of the Union would be to let the Lake sailors know, as they have let the rest of the world know, that they are against racial discrimination. Now, it passes all understanding that in a given situation they want to say, "Well, we don't want this particular policy to be known." But as I say, there isn't any evidence that it was so confined.

So, I think this "N.M.U. Fights Jim Crow" pamphlet has simply been set up as a scare head; something for the Board to talk about. It has no relevancy in this case at all. It is Union literature and it was on that vessel, telling its message. Now, who put it on there, we don't know. But,

certainly, the inference that it was put on there by this other Union is certainly as plausible or more plausible than that it came from any other place. And the testimony that the Company did not put it on has certainly not been met in this case.

Now, this question of our failure to produce Chief Curry.

You will recall that the testimony was that not the captain, but Mr. Zyp, had come aboard and requested Curry to fire the organizer. The testimony is also uncontradicted that Mr. Zyp, if he did do such a thing, exceeded his authority and, further, that the Chief did not fire the organizer. So that, even if the statement were true, it wasn't carried into effect and could not constitute coercion.

Now, the Olds case. The Board has concentrated a great deal of its testimony on the Olds case.

The testimony is uncontradicted, Mr. Leff, that in the opinion of the three mates on this vessel, Shartle was not a competent seaman; that he was not just averagely incompetent, but that he could not learn how to become a sailor; that, while he had A.B. papers, he couldn't do any of the things which an A.B. is required to do. He was given ample opportunity, I think the Trial Examiner will agree, to learn.

Now, the fact that Vogel didn't complain about doing too much work has no possible bearing, because the testimony has demonstrated that Vogel was a member of the Union and it can be reasonably argued that he was willing to do this extra work.

Now, this man was chastized by the Second Mate for failure to do his work, and that matter was reported to the First Mate. But the First Mate, on whom rested the responsibility of discharging this man, felt that he should be given another opportunity.

Now, the same thing was true with respect to the handling of the electric winches. They even went to the extent of having a mate stand by that man to see if he could be taught.

Now, if the Trial Examiner please, there must come a time when the type of work of the man is such that he isn't useful to the vessel. And where these electric winches are involved, his work might have become a hazard to the other men on the vessel.

Trial Examiner Leff: Is that why he was fired, primarily? Do you contend it was because he couldn't operate the electric winches?

Mr. Ray: We contend, if the Trial Examiner please, because of the entire picture, his history of lateness, the fact that he didn't carry the proper part of his job during the painting, the fact that he couldn't handle the administrative job of getting the work out of the men under him, he had no organizing ability, the fact that he couldn't handle the winches, and the last, because he couldn't do the splicing.

Now, when you talk about those things, Mr. Leff, you have just about included everything that an able-bodied seaman has to do.

Trial Examiner Leff: Well, do you take into consideration the fact that the discharge occurred at a time, when, as the Industrial Relations man of the Company testified, the Company was prepared to hire, almost, one-eyed and one-legged men?

Mr. Ray: I submit, however, that the language used by Mr. Garbutt was colorful and descriptive, because you know as well as I do that no one-eyed and one-legged men were hired.

Trial Examiner Leff: No, I didn't take it that way. But I understood him to mean they were prepared to hire almost any man who was only partially physically fit.

Mr. Ray: Let's take the other statement, the fact that they were 10 percent short. That might relate to the question that they relaxed their medical requirements when they put a man aboard. But that can't have any effect on whether a man can do the work when he is aboard.

And, they took a man and put him in Shartle's place who could do the job. That's the important consideration in that case. They went along with that man for over a month, all three mates aware that he wasn't doing his job. Because of this shortage, they did put up with him as long as they could.

In my own opinion, the mate's description of the way that fellow acted and his lack of proficiency in his work would have justified his discharge a week after he got there. But we happened to have a Mate on there that wanted to go along with him and see if he would improve. Now, he didn't have any ability along wheeling lines.

On the other side of the picture, what is the evidence as to whether he was fired for his Union activities?

Trial Examiner Leff: Well, doesn't the record disclose that the Second Mate, or, Third Mate, on whose watch Shartle served, wasn't dissatisfied with him, at least to the point where he wanted him discharged?

Mr. Ray: Well, I think the evidence goes a little bit further than that. They didn't recommend the actual discharge of the man because that, as Captain Murray said, rested primarily with the First Mate, himself.

Now, the responsibility of firing the men on that vessel rested with Dobson. Dobson so testified; the Third Mate so testified. In reply to a question put by yourself, he said that that was the First Mate's province.

Trial Examiner Leff: Well, the Captain testified, in substance, that it was the duty of any mate to recommend a man for discharge if the work was incompetent, and here the mate who had direct supervision over Shartle made no such recommendation.

Mr. Ray: Who had direct supervision?

Trial Examiner Leff: It was either the Second or Third Mate.

Mr. Belkin: The testimony is very clear that Shartle was on the Third Mate's watch, and the Third Mate made no recommendation. I think the record will so show.

Trial Examiner Leff: Well, I think Mr. Ray is arguing the case.

Mr. Belkin: I am saying it for the benefit of Mr. Ray's argument.

Mr. Ray: Thank you.

Trial Examiner Leff: Mr. Ray recalls, I think, that he was on the watch supervised by either the Third or Second Mate.

Mr. Ray: The Third Mate's watch. And the Second Mate, if I recollect, recommended his discharge. And if he didn't recommend discharge, he reported these instances to the First Mate. He certainly reported this instance where Shartle was doing no work, or a lesser proportion of work, during the painting. He certainly reported this situation with respect to the winches. The First Mate, himself, was present and assigned the work on the splicing. So that, these mates, all three of them, knew the nature of this fellow's work.

Now, you have had an explanation given to you, Mr. Leff, about this waiver situation. The Board, throughout the case, has been attempting to point its finger at the proposition that the vessel was traveling without its proper complement of A.B.'s and urging, in that connection, that even with that situation in existence they fired Shartle and put a seaman in his place.

Now, Captain Murray explained that situation to you. The law was complied with in having maintenance men appointed, and the requirement as to A.B.'s, itself, was relaxed through waivers secured from the Coast Guard during this emergency.

Trial Examiner Leff: What are maintenance men? I don't recall any maintenance men aboard the ship; I mean, reference to that.

Mr. Ray: This vessel was the only type of vessel where they had these maintenance men on hand, is that right?

Mr. Hinslea: Yes.

Mr. Ray: They work during the day. They don't stand a regular watch. They work during daylight hours.

Trial Examiner Leff: Does the record show there were maintenance men on this vessel?

Mr. Belkin: No.

Mr. Ray: Captain Murray testified there were maintenance men aboard this vessel.

Mr. Belkin: I beg to differ with counsel for the Respondent. There is no testimony that there were maintenance men aboard this ship.

The record will bear me out that Captain Murray testified if there were maintenance men, they could take the place of A.B.'s.

Mr. Murray: I said—

Trial Examiner Leff: Just a moment, Mr. Murray. You are not on the stand now.

The record will be read, and the testimony in it will be considered.

Please proceed.

I don't want you to interrupt Mr. Ray's argument.

Will you proceed, please.

Mr. Ray: This isn't a case, Mr. Leff, like we had in the Midland Steamship, where there was a failure to do certain types of work. It is a case where a man may have

attempted to do it but either didn't have the spirit or didn't have the mental capacity.

The question that you have got to decide is how long a Master and the licensed personnel on a vessel have to put up with a situation of that type.

Now, on the other side of the picture, these men testified—

Trial Examiner Leff: Are there many things that a seaman holding the position of Mr. Shartle was required to do besides take care of electric winches and splice cables? Is that a principal part of the functions?

Mr. Ray: He has to handle hatches, and he has to stand lookout, and occasionally relieve the wheelsman. In other words, principally, his most important function when you are navigating is to act as lookout.

Trial Examiner Leff: Does the record indicate whether that was ever reported to the First Mate?

Mr. Ray: The record is silent as to what his ability was along that line.

Trial Examiner Leff: No, I mean his inability to handle the wheel.

Mr. Ray: No. My recollection is that that was confined to Captain Murray. Captain Murray testified he didn't report that to anyone; that it was his practice to call these various men up to see if the man had ability along wheeling lines, and if he did he would have him work in to a wheelsman's job.

That's the only part of Shartle's job of which Captain Murray had personal knowledge.

Now, the rest was confined to Dobson, and Dobson not only was getting his information through personal observation, but from the reports of the other mates.

Now, the other side of the picture is this. We don't have to show a justifiable reason for the discharge. The Board has to show that he was discharged for Union activity.

In this case, Mr. Leff, there were 12 or 13 organizers called as witnesses, and the Trial Examiner has had a chance to observe the demeanor of the various witnesses. And it was perfectly apparent that men like Lee and Weissflog, who were aggressive, intelligent fellows who would get out and organize and do it in the open and would talk to the Captain, would badger him, in some instances, into

getting into arguments with them, those fellows decided to organize openly.

Now, the Captain and these three Mates on this vessel have testified that they did not know that this man was an organizer. There is nothing incredible about that. I feel convinced, from having seen Shartle on the stand, seeing his mental processes, the way he responds to things and checking the various things that he did and didn't do, as reflected by his testimony, that he undoubtedly organized secretively.

It is very clear to me that Gerlach would know that Weissflog was an organizer, because Weissflog was letting everybody know that he was an organizer, and didn't care.

Now, Shartle probably figured that he could do more effective work by doing it with the crew and not letting anybody know it, because this man, whose veracity has been absolutely unquestioned—and I am referring to Captain Murray—said that he did not know that this man was an organizer until after the fellow left the ship.

If that is true, and you have, on one side, the record of gross incompetency, if I have ever heard of it or listened to it in testimony, and lack of knowledge that the man himself was organizing for the Union, you have the situation where the Board has simply failed to prove its case.

Now, we haven't come in with a defense of one particular incident where these men, in the exercise of snap judgment, fired this man. It is a picture of enduring this fellow just as long as they thought they could endure him, and then, in order to have that job handled properly, they got rid of him and put a man in his place that could do the work. Now, that, it seems to me, is a pattern of the way a vessel is operating.

Mr. Hinslea has referred to the history of the Pittsburgh Steamship Company as it relates to labor matters. There is one thing that he didn't mention that I want to stress.

It is clear, from the testimony, that the individual in the Pittsburgh Steamship Company who created the policy, the labor policy of the Company, and who was the fountain head of that policy, was Mr. Ferbert, the President of the Company.

Mr. Ferbert is more than a figurehead in the Company. He is the active head in that Company.

Now, not only Mr. Garbutt, but three or four or more than that of the Captains and the Chief Engineers have testified as to the instructions received at the 1944 and 1945 meetings. And I challenge the Board to point to anything in the instructions given by Mr. Ferbert which would smack of anti-union policy and which, on the other hand, did not create a picture of absolute neutrality.

Now, Mr. Ferbert told the assembled Captains and Chief Engineers that this election would probably be held. He told them that the Union would undoubtedly be organized. He told them that the Union had a right to organize, that the men had a right to choose their own collective bargaining agent, and that the men were to maintain a position of absolute neutrality.

He said, "If the organizing activity on the vessel interferes with its proper operation or the proper discipline, you have the right to step in there like you would if any other activity was going on in that vessel which interfered with its safety and discipline."

Now, I submit to you, Mr. Leff, that the president of the Pittsburgh Steamship Company had a perfect right to issue those instructions, he was wholly within the line, and that when we are looking to see what the pattern was with respect to this Company—and that is the only thing that matters in this case—we are to look to the man who created that policy and who issued his instructions to his principal lieutenants, who, in turn, conveyed it to their mates and engineers.

Now, Mr. Hinslea has discussed the evidence as to these various lieutenants, and he has also said that even assuming that some of the statements and actions were true, that it cannot, in and of itself, create a pattern.

The case we rely upon, if the Trial Examiner please, in connection with that doctrine, is a case with which I am sure you are familiar, the case of the Boeing Airplane Company, where the Boeing Airplane Company had—

Trial Examiner Leff: Do you have the citation of that case?

Mr. Ray: I am going to give it to you right now. It is C.C.A., Tenth Circuit, and I don't have the—

Trial Examiner Leff: All right. That's enough for me.

Mr. Ray: That's 8 Labor Cases, 61982.

In this case, there were eight employees charged with making anti-union statements. The testimony was that there were 1000 supervisory employees, seven or eight of whom made anti-union statements.

Now, here is what the Tenth Circuit Court of Appeals said in that connection:

"Each of the employees to whom the statements were made testified that they were familiar with the Company's policy and were not influenced by the statements. Whether the particular employees to whom the statements were made were influenced or restrained is, of course, not necessarily the test of unfair labor practices, but it is pertinent to consider whether the anti-union statements were made in a setting, or circumstances, which may fairly be said to be symptomatic to an existent condition and whether the statements had a general rather than a specific effect."

Now, the Tenth Circuit Court of Appeals said in that case that when you take a 1000 supervisory employees—and in that case they found that the statements made by those eight supervisory employees were anti-union statements. But they said it couldn't possibly be symptomatic of a general condition. They were specific instances, they didn't set the pattern, the ratio between the number of superintendents and the men charged with making those anti-union statements was so great that it couldn't possibly reflect the manner or the general attitude.

Now, in this case, Mr. Leff, we are dealing with the largest fleet, by far, on the Lakes, with nearly 600 supervisors. Even assuming, as Mr. Hinslea has said, that these statements were true and in and of themselves constituted coercive statements; considering that in connection with the background of the no-anti-union activity on the part of the Company up to this time and the fact that the president of the Company in the two meetings during the time that we are considering here gave specific instructions that they were to remain neutral, the statements of these men involved in this case, assuming that they bind the Company because they are supervisors, do not reflect a general situation but are simply individual, sporadic instances that must be considered in that light and not symptomatic, as the Tenth Circuit Court of Appeals says, in this case.

Just one other case I want to draw the Trial Examiner's attention to, and I will be through.

I realize that in some of the cases the Circuit Court of Appeals and the Board have found, with what would seem at first glance to be little evidence of anti-union statements; to put it another way, the statements themselves didn't seem to be coercive in their nature.

But, the Circuit Court of Appeals in the Fifth Circuit in the Jacksonville Paper Company versus the Board has certainly approved a situation that seems to us to be logical.

I haven't been able to find any Supreme Court Case that expressly narrows the scope of this case.

Now, here is what the Circuit Court of Appeals says:

> "The Act does not take away the employer's right to freedom of speech. The Constitutional right of freedom of speech could not be so abridged as to preclude an employer from expressing his views on labor policy or problems so long as such utterances do not, by reason of other circumstances, have a coercive effect on employees."

Then, they cite the Board versus Virginia E. & P. Company. Then, quoting further:

> "We take it that an employer has the right to express his hostility to the Union if he has any. He has a right to express his opinion of the leaders of the Union, be that opinion good or bad. He is not precluded by the Act from inquiring or being informed as to the progress or the efforts at unionization. He has a right to inquire if the Union was organized or if it has 'washed up,' but the employer cannot under the Act use that Constitutional right of freedom of speech threateningly or coercively."

Trial Examiner Leff: Well, doesn't that beg the question which is before us?

Assuming that the Board establishes the allegations of its complaint to the extent of showing that there were some coercive statements which are coercive in and of themselves and, in addition, that there was a discharge—I am not saying that I will find a discharge. But assuming those things were established, can't you consider the coercive statements and discriminatory acts in conjunction with the statements expressing mere hostility and bring them all together as indicative of a total picture?

Mr. Ray: Well, I think you have to do that. But, certainly, this case widens the scope within which the employer can act and still not have them of a coercive or intimidating nature. In other words, some of the other cases narrow the scope very markedly. But this seems to me—

Trial Examiner Leff: Well, the Supreme Court in the Virginia Electric Power Case, with which you are undoubtedly familiar, has said if you have that speech alone, if they are not coercive, it might not be violative of the Act. But if you have the speech plus conduct, you can bring it all together and the total picture thus presented, including the speech, might be considered interference.

Mr. Ray: Well, that's true, Mr. Leff.

But the reason I am citing this case to you is this:

The Board stated through its counsel and in his argument today, that it is the Board's position that the Company had no right to enter the arena. Now, if the doctrine of this case is sound, they do have the right to enter the arena if their acts and their statements do not amount to coercion.

Mr. Belkin: If they don't take a punch.

Trial Examiner Leff: Of course, I realize that the Circuit Courts are in conflict on that point. While there may be other circuits that will hold to the doctrine of that case you have circuits such as the Seventh Circuit which says that the employer can't under any circumstances make himself a contestant in the election.

Mr. Ray: Well, as I told you at the outset in the discussion of this case, that's not the only doctrine on this case. But it represents what we believe is a sound doctrine.

That is all, if the Trial Examiner please.

Trial Examiner Leff: Thank you very much.

Mr. Belkin: I wonder if I could add a statement before we go?

Trial Examiner Leff: Surely.

Mr. Belkin: I want to clear up this picture on Shartle. There is another thing I'd like to discuss, but will take it up in my brief. I was also going to take this up there, but I want to apprise the gentlemen of what I am going to say on this issue and I want the Trial Examiner to have it in his mind when he leaves this room.

The Shartle picture, as I see this, is very clear. Mr. Ray has made an issue of the comparative veracity of the

witnesses. I feel that the record will show that Shartle was a very, very honest and sincere witness, whereas the Respondent's witnesses almost without exception were not. In fact, I feel that very strongly, and I think the record will show it.

But continuing the picture of Shartle, as I see it: As Captain Murray said, he hired Shartle after Shartle told someone his experience, and Shartle must have been hired on the basis of—perhaps not on the basis of inexperience, but the Company must have known it.

What was Shartle's experience? He, like many others, was a young lad of about 19 who was trained at a Coast Guard School. He was trained as an A.B. Previous to his serving with the Pittsburgh Steamship Company in 1944, he served with another Company on, I believe, the Ship Champlain, with no complaints.

But this lad came, as many other lads have come, to the Pittsburgh Steamship Company and other companies, without much practical experience, though he had some theoretical experience.

Now, the Pittsburgh Steamship Company was desperately in need of men in 1944 and 1945. They took this boy aboard the Olds, a new ship, one of their big five. It was an all-electrical ship. It had equipment that wasn't widely in use. It was the newest kind of equipment. For example, the winches.

They attempted to train this boy, and I don't know whether they really and sincerely attempted to train him or not. But surely a month was not sufficient trial. Certainly it was not reasonable trial.

Shartle went on and served on other ships. He is serving on a ship on the ocean. If the statements of Dobson were true that this boy would never be a seaman, he wouldn't be on ships today.

Take this lad when the Captain tried him out for an hour at wheeling. I don't suppose anyone wheeling for the first time is competent. He was never given any other tests. He wasn't on board long enough for that.

He is given a job of splicing a cringle, a very, very difficult job, which the record shows was often done by mates, was always done by at least two men, and, on the basis of these three things: on the basis of the fact that he

was tardy twice at the very beginning of the shipping season; in fact, before the ship sailed, and never was tardy thereafter, on the basis also of the fact that he didn't splice a cringle, on the basis of the fact that he did mis-handle a winch, although he was permitted to operate that winch, supposedly under supervision thereafter, a month after the first incident and at least three weeks after the second, suddenly this lad is discharged, by the First Mate, says the Captain.

Every other captain we had on this stand before you, Mr. Trial Examiner, testified that while mates could recommend firing or hiring, his was the ultimate authority, and that he checked these cases. But in this case, Captain Murray alleges that he took the word of the First Mate who had never before recommended anyone for discharge, even though the evidence will show, the evidence of the Respondent's own witnesses, that this ship was short its normal complement of A.B.'s at the time it sailed, and would be further short if Shartle was let off the ship.

I say to you, Mr. Trial Examiner, that in all sincerity this is one of the most flagrant cases of 8 (3) that the Board has ever had. And I say to you that the decision was made solely on the basis that this boy was a union organizer. And I say, again, it is absolutely incredible that anybody organizing aboard a ship for at least a month would be unknown as a union organizer.

That is all.

Trial Examiner Leff: Nothing further?

As you know, in due course I will file an intermediate report, and after the intermediate report is issued, the case will be transferred to the Board and the Trial Examiner's connection with the case will then cease. The procedure to be followed from that point on is outlined in Section 33 of the Board's Rules and Regulations. I believe you have a copy of it, and you can examine it. That relates to the time within which exceptions are to be filed and the matter to be contained in the exceptions. It also relates to the time of filing briefs with the Board and requests for oral argument.

There being nothing further, the hearing is closed.

(Whereupon, at 5:50 o'clock, p.m. Tuesday, October 2, 1945, the hearing in the above-entitled matter was closed.)

BOARD'S EXHIBIT 2.

Letter, May 2, 1944, Pittsburgh Steamship Co. to All Unlicensed Employees.

(Received in Evidence July 26, 1945.)

PITTSBURGH STEAMSHIP COMPANY
CLEVELAND, OHIO

May 2, 1944

To All Unlicensed Employes:

We assume your attention has been called to the election to be held on all our ships commencing June 6. The question to be decided is whether you and every other unlicensed member of every crew on our ships are to have for your exclusive bargaining agent the National Maritime Union (C.I.O.) with the sole and exclusive right to represent you in all matters regarding rates of pay, wages, hours of employment, and other conditions of employment.

When the Union filed a petition last November with the National Labor Relations Board asking for an election, the Company offered no objections, and consented, believing that it was your right to decide whether or not you wanted representation.

Sometime before the election we shall again write you with reference to how the election will be conducted, and the necessity of everyone voting.

This is an important election, determining as it will whether you wish to place your employment conditions in the hands of the Union. We do not know what the program of the National Maritime Union will be if it is elected to represent you—or what it is promising you as a reason for your votes. We do know that this Company pays the same wages that are paid on all Great Lakes bulk freighters, regardless of whether they have a Union contract. We further know that neither the Union nor the Company has today control over what wages shall be paid. As you know, during this Emergency, the question of wage rates is in the hands of the Government—in that they have been frozen by the Government and their regulation must be in accordance with essential Governmental Stabilization policies. Any and all wage changes must be approved by the War Labor Board.

The Company recognizes the right of each employe to join any Union he may select and such membership will not affect his position with the Company. On the other hand, the Company feels that it should be made clear to you that it is not necessary to join any labor organization if you do not so choose.

It is approximately six weeks until the election. During this time you will hear many arguments pro and con by your fellow seamen. Your job however is to make up your own mind as to what is best for you, and to vote according to your own best judgment. It is important that you do vote, for only by every employe casting his ballot may the will of the majority be determined.

A. H. FERBERT,
President.

BOARD'S EXHIBIT 3.

Letter, June 1, 1944, Pittsburgh Steamship Co. to All Unlicensed Employees.

(Received in Evidence July 26, 1945.)

PITTSBURGH STEAMSHIP COMPANY
CLEVELAND 13, OHIO

June 1, 1944

To All Unlicensed Employes:

In a few days it will be your privilege to vote in an election which will decide whether or not the National Maritime Union will act as the sole and exclusive bargaining agent for every unlicensed man in our fleet, whether they belong to the Union or not. The outcome of any election under our democratic procedure is important; therefore, everyone should vote.

Wages are of interest to everyone. Wage rates, as you know, are controlled by the Government. It has always been the Company's desire to pay wages as high as any competitive company, and the record bears out the fact that this desire has been a reality.

You should carefully consider some of the issues which have been referred to by the Union ..... one is "rotary hiring." To make sure that you understand what this means ..... it means that you are entitled to return to the same ship in the spring that you laid up the previous fall, but if you are following an engineer or mate, and want to work with him, and he is promoted, he cannot hire you. This is called "fleet seniority." Again, if you ship out as deckwatch, you cannot be promoted to a watchman or lookout when there is a vacancy. The vacancy must be filled by the man at the top of the list at the Union Hall. If you do not go back to the same ship in the spring, you register at the Union Hall and work your way up to the top of the list, and take the first opening for the position you are seeking, whether it be in our fleet or some other fleet. If you refuse the position, then you go to the bottom of the list.

The Company continues in its long policy of not requiring membership or non-membership in any labor organization as a condition of employment. The Company will continue to afford the right to work to qualified seamen whether or not they join or do not join a labor union. There is no law requiring you to join or not to join, or to pay dues or not to pay dues, to any labor organization as a condition of employment.

In deciding whether you wish to select the National Maritime Union as your bargaining representative or not, you should make up your mind whether representation by the Union will better serve your needs in your relationship with the Company. You should also consider the various aspects of the Union; its program and its leadership, and should carefully consider whether all of these things will be in your best interest. The past record of this Union and the past record of the Company both should be carefully studied. Questions such as these should be carefully thought about and discussed among you so that your selection may be an intelligent and a wise one. No one must threaten you in this election. It is your privilege to make up your own mind as to how you should vote.

One thing more ..... we are now all engaged in carrying iron ore for the war effort which we want to finish just as fast as we can. Let us allow nothing to interfere

with this objective, and if the majority select the Union, let us all be bound by it and cooperate.

A. H. FERBERT,
President.

BOARD'S EXHIBIT 4.

Speech of Fred Bradley, May 19, 1944, in the House of Representatives.

(Received in Evidence July 27, 1945.)

Stick to the Facts

SPEECH OF
FRED BRADLEY
of Michigan
in the
HOUSE OF REPRESENTATIVES
May 19, 1944

Not printed at Government expense.

United States Government Printing Office, Washington: 1944

MR. BRADLEY of Michigan. Mr. Speaker, our good, true, loyal friends who go down to the sea in ships lead a strenuous and at all times a potentially dangerous life. It has been well said that "The seas are fundamentally safe but, at the same time, the seas are terribly unforgiving of ignorance, carelessness, or neglect." Those men and those women who go down to the sea in ships realize all too well the potential hazards of their profession. The owners of those ships and the governments under whose flags they sail generally lean over backwards to provide for every possible protection for their safety afloat. I know from my own personal experience of 18 years as a purchasing

agent—but not as an owner or even stockholder—of a fleet of vessels operating on the Great Lakes, that it was always the policy of that company to immediately authorize the purchase, regardless of the cost, of any equipment or any device that would promote the safety of the crews of those vessels; and how frequently I rode aboard to see how our aids worked out in practice. On the other hand, how often I took bids on equipment to promote greater efficiency of operation and greater measure of profits to the owners, only to be refused approval; but, I repeat, whenever any requisition was before me to purchase any safeguard for the welfare of those crews, that requisition received immediate approval, and let no man on the Great Lakes deny the truth of that statement. And in making that statement, I do so in refutation of the following quotation from a broadcast made over radio station WSOO, on May 5, 1944, on the National Maritime Union program:

> We can expect little initiative by ship-owners to remedy abuses of safety conditions in spite of the disaster that cost 10 lives on Lake Erie April 27.

No more outrageous falsehood has ever come to my attention; especially when, within the past few weeks, I have been personally working with the Coast Guard officials in Washington, and with the Navy Officials, to obtain consent for the continuation of experiments in the use of one of our newest wartime appliances, namely the famous radar, on ships of the Great Lakes fleet to prevent collision at sea. And may I say in passing, that I know something about the development of the radar, because back in 1925 I personally was a co-licensee on a patent to provide for radio fog horns at sea, designed to promote the safety of those who go down to the sea in ships; the development costs of which were all borne by the steamship interests for which I was then an executive employee. And this particular patent of ours was the forerunner of and applied the same basic principles upon which the famous radar has now seemingly reached perfection. This and many similar "safety-at-sea" devices were being developed and installed long before the National Maritime Union was ever heard of on the Great Lakes—or anywhere else.

It is most saddening and unfortunate that at times those of our friends who go down to the sea in ships become

involved in tragic disasters such as those referred to which happened in the dense fog in Lake Erie in the early morning of April 27 when, within the space of a very short time, the steamer *James H. Reed* was involved in a tragic collision with the Canadian vessel *Ashcroft;* and the steamer *Philip Minch* was in collision with the steamer *Frank E. Vigor.* Fortunately, there was no loss of life in the latter collision. In the case of the steamer *Reed,* which sank within a very few minutes, 10 members of the crew are known dead and 2 others are missing.

I am very much concerned with newspaper reports that have reached me which have quoted certain union officials as charging laxity on the part of the United States Coast Guard in enforcing the Bureau of Marine Inspection and Navigation regulations applying to the safe operation of our vessels on the Great Lakes, as being responsible for these tragedies. For instance, one official charged—and I quote:

> Undermanned ships were partly chargeable to shipowners' desires to thwart the union's Great Lakes organizing drive.

I note further in a reporter's account of the tragedy, appearing in the Ashtabula Star-Beacon of Friday, April 28, this statement:

> A large percentage of the crew (referring to the survivors of the steamer *Reed*) appeared very young; many of them not more than 16 to 17 years of age.

Now in view of these charges, it would, perhaps, be well to look into certain indisputable facts. Under date of February 28, 1942, the President of the United States, by Executive order, under authority of title I of the First War Powers Act, 1941, and in order to expedite the prosecution of the war effort, ordered the functions of the Bureau of Marine Inspection and Navigation transferred from the Department of Commerce to the United States Coast Guard. Under date of March 26, 1942, the Secretary of the Navy—under whose orders the Coast Guard operates in time of war—signed an order waiving compliance with the provisions of section 13 of the act of March 4, 1915, as amended, section 1 of the act of June 16, 1938; the act of July 8, 1941; and the act of September 25, 1941, to

the extent necessary to permit the issuance of regulations relaxing certain statutory prerequisites to the issuance of certificates of service as able seaman and as qualified members of the engine department. The present requirements of service for a certificate of service as able seaman on the Great Lakes is 6 months service on deck, at sea or on the Great Lakes, or lakes, bays, or sounds, in vessels of 100 gross tons or over, or in decked fishing vessels or United States Government vessels of any tonnage. The present requirement of service for a certificate of service as a qualified member of the engine department is at least 2 months service in the engine department of any vessel on any waters. The Acting Secretary of the Navy having by order dated October 1, 1942, waived compliance with the navigation and vessel-inspection laws administered by the United States Coast Guard in the case of any vessel engaged in business connected with the conduct of the war, to the extent and in the manner that the Commandant, United States Coast Guard, shall find it to be necessary in the conduct of the war; the Acting Director of the Office of Defense Transportation having advised that a critical manpower situation has developed in Great Lakes transportation, the Commandant on April 22, 1944, waived to the extent necessary, compliance with any law or regulation imposing requirements for carrying as members of the crews of such vessels certificated seamen rated as qualified members of the engine department.

Mr. WEICHEL of Ohio. Mr. Speaker, will the gentleman yield?

Mr. BRADLEY of Michigan. I am always pleased to yield to my distinguished friend from Ohio.

Mr. WEICHEL of Ohio. I have spent a great many years of my life on the shores of Lake Erie and along the Great Lakes. Also, I spent a number of years of my life actually as a sailor on Great Lakes vessels. I started in as a deckhand on the old steamer *Arrow* more years ago than I care to remember, and eventually I rose to the rank of wheelsman on Great Lakes steamers, so I am intensely interested in this subject, for I learned from experience the problems of the seamen in the years gone past, and my interest, naturally, has continued in the problems of our present day sailors. During all this time the Coast

Guard has rendered great service, not only to the public but to the men at sea who are moving the vast cargoes of war material down the Great Lakes. During this time the Coast Guard has had an unblemished record of achievement and service. May I ask, as a member of the Committee on the Merchant Marine and Fisheries, since the Bureau of Marine Inspection was transferred to the Coast Guard has any radical change of personnel been made, or have any radical changes in policy within the Bureau of Marine Inspection and Navigation been occasioned by this transfer the gentleman has mentioned?

Mr. BRADLEY of Michigan. I am very pleased that my distinguished colleague on the Committee on Merchant Marine and Fisheries, who I believe is also a member of the subcommittee dealing with Coast Guard affairs, has raised that question, because the facts of the matter are these.

It is well to remember the rapid expansion that has been forced upon the administrative personnel in the Coast Guard. Vice Admiral Russell R. Waesche, commandant of the Coast Guard, and his very able assistants have very ably handled a tremendous expansion program. Back in early 1939 the Coast Guard consisted principally of the famed Life Saving Service and the Revenue Cutter Service. Their entire personnel was approximately 5,000. Under reorganization plan No. 2, effective July 1, 1939, the Bureau of Lighthouses, Department of Commerce, was transferred to and consolidated with, and administered as a part of the Coast Guard. Shortly thereafter, with the threat of war becoming more pronounced every day, a rapid and tremendous expansion program of the Coast Guard combat personnel was ordered, because it had become apparent to our military leaders that the Coast Guardsman, always basically trained in smallboat handling, was the logical service to whom we should turn for guidance and instruction in the handling of the landing craft to be used in our future operations when, as, and if we were forced into this war. Then it was in February 1942, as I have previously stated, that an additional burden was thrust upon an already overtaxed administrative personnel in the Coast Guard when they were ordered to assimilate the operations and personnel of the Bureau of Marine Inspection and Navigation which had theretofore been under the control of the Department

of Commerce, and this transfer, let us remember, was to be made less than 3 months after Pearl Harbor, at a time when with the advent of war an even greater expansion in the combat personnel was in progress.

Admiral Waesche, acting with his usual skill, with his serene competence and unquestioned executive ability, aided by his ever capable associates, reasoned that the smart thing to do was to bring the Marine Inspection Service under the Coast Guard without any radical shake-up in personnel. He followed the precedent which he had established in the assimilation of the Bureau of Lighthouses, and which had worked out so satisfactorily. He permitted any member of either Service to either join the Coast Guard and assume a rank comparable with his previous civilian status or retain his previous civil service status.

Second. With respect to the Bureau of Marine Inspection and Navigation, and that is what I am primarily confining my remarks to this afternoon, I might say to the gentleman that Commander Richard Field, who had been the Director of the Bureau of Marine Inspection and Navigation under the Department of Commerce, was promoted to a captaincy and was continued in his capacity as directing head of the Bureau of Marine Inspection and Navigation until his retirement due to ill health 6 or 8 months ago. He has been succeeded by his former assistant, Capt. H. C. Shepheard. It is, of course, perfectly obvious that in taking over this organization in its entirety with the same directing personnel at the top that relatively few changes in personnel in the field took place excepting insofar as occasioned by the tremendous expansion in our wartime shipbuilding program. Even then the trained inspectors within the Bureau were promoted to supervising positions to train and handle the incoming inspectors placed under their control.

To further elaborate on the gentleman's question with regard to personnel I am sure the gentleman realizes because of his many years of familiarity with Great Lakes shipping that the Bureau of Marine Inspection and Navigation has always been known as a very efficient well-trained organization. For instance at the present time in command of the entire Bureau of Marine Inspection and Navigation functions on the Great Lakes is Commander Earl B. Hull, stationed in Cleveland. Commander Hull was for many

years a chief engineer operating on Great Lakes vessels. He went into the Bureau of Marine Inspection and Navigation Service a number of years ago as a Great Lakes inspector. Then he was made a traveling inspector. A traveling inspector is one of those gentlemen who goes all over the United States and outside of the continental United States, to Hawaii and to Alaska to inspect the most difficult cases where perhaps the local inspectors feel that they want the judgment of a more experienced man to pass on certain matters involving the safety of those ships at sea. In addition to these duties he was a member of the technical staff.

Commander Hull with all of that experience was brought back into Cleveland, when an opening developed, and he was put in command of all the inspection on the Great Lakes. His assistant is Lieutenant Commander Pollock, who sailed for many years as a master on ships on the Great Lakes, and he works very closely with Commander Hull. Those are just two typical instances of the extremely high quality and experience of those men who are charged with the enforcement of the inspection and navigation laws of the Great Lakes.

Mr. WEICHEL of Ohio. I might say, then, according to your information, this highly skilled personnel of the Bureau of Marine Inspection who are experts with reference to the rules and regulations and what might be necessary for safety at sea, have been retained by the Coast Guard to carry on the same functions they previously carried on, in the Great Lakes especially.

Mr. BRADLEY of Michigan. You mean those who were formerly under the Department of Commerce?

Mr. WEICHEL of Ohio. Under the Department of Commerce; yes.

Mr. BRADLEY of Michigan. Absolutely.

Mr. WEICHEL of Ohio. I am glad to hear that, as a member of the Coast Guard Committee.

Mr. BRADLEY of Michigan. That is absolutely true.

Third. I would like to remind my colleague of one marked improvement which Admiral Waesche and his capable associates instituted in the entire marine inspection picture with respect to improving safety at sea. Admiral Waesche organized a merchant marine council, headed by Captain Field, composed of outstanding men in the

several different branches of the Coast Guard, who were best able to recommend changes in regulations, always with the thought in mind of promoting safety at sea; and this board has functioned very effectively ever since, having that one thought of safety at sea always in mind and succumbing to no pressure from management, or operators, or from the unions, or from the non-union operating personnel, but always and at all times amenable to suggestions and recommendations from all groups.

Mr. RAMEY. Mr. Speaker, will the gentleman yield?

Mr. BRADLEY of Michigan. Yes; I will be glad to yield.

Mr. RAMEY. I want to concur with my colleague from Ohio about the most admirable work that has been done by the Coast Guard, especially in the Great Lakes. I am an islander, having formerly lived as a boy on Middle Bass Island and Put-in-Bay in Lake Erie. I know of the lives that they have saved also in the vicinity of Marblehead, Ohio. It is truly a great organization of which we are all proud in my district.

Mr. BRADLEY of Michigan. I thank my friend for his observations of approval of the work of the Coast Guard.

Now those of us who have spent most of our lifetime on the Great Lakes resent these charges of laxity that have been leveled against the United States Coast Guard—our first Navy, organized in 1790, and proud of its traditions.

In this connection, I feel I can do no better than to quote part of an editorial on this subject which appeared in the Sault Ste. Marie Evening News under date of May 2, which reads:

> We who have lived close to the Great Lakes have felt pride in the fact that the Great Lakes ships are well-manned and well-officered. Men are promoted to captain or mate only after years of experience have proved their ability to assume responsibility. Able seamen are attracted to the Great Lakes because living and working conditions are better perhaps than any other place in the Nation.
>
> The United States Coast Guard has been charged by the President with the administration of the regulations governing the navigation and the safe operation of our steamers on the Great Lakes. It is a well-known fact, however, to anyone who has had any experience with the opera-

tion of our ships on the Great Lakes, that it is the general practice for all masters to be in the pilot house or on the bridge of their steamers, and the chief engineer in the engine room in all periods of danger. Masters and engineers are on their toes whenever their steamers are entering or leaving port, whenever they are navigating any of our tortuous river channels, and most assuredly on the job whenever they are enduring periods of stress of weather, such as the unfortunate fog during which these two tragedies occurred on Lake Erie on April 27.

Let us get into the bare, indisputable facts in connection with these two collisions. The steamer *James H. Reed* was required by her certificate of inspection to carry as officers and crew one master and three pilots; six able seamen; three ordinary seamen—forward; and in the after end, one chief engineer; three assistant engineers; three oilers, six firemen, and three coal passers; and in the galley, a crew of four. The *Reed* had on board at the time of the collision with the Canadian vessel *Ashcroft*, a full complement of crew as required by her certificate of inspection with the exception of one fireman, James Hyslop, who was taken off at Detroit by order of Selective Service some 12 hours prior to the collision, for pre-induction physical examination. At the time of the collision, this fireman would have been off watch had he been on board, and in bed—as were most of the rest of the crew who were not on watch—and, perhaps, would have lost his life. There were on board and on duty a full complement of licensed officers and crew as called for by the law. Captain Brightstone, master of the *James H. Reed*, is a man 49 years of age; he has held a master's license for some 15 years. He was on the bridge and in active charge of the navigation of the vessel before and at the time the collision occurred. Captain Brightstone has had 29 years of sailing experience; his first mate, Malcolm Moore, 18 years' sailing experience; the wheelsman on duty, 14 years; the watchman on duty, 20 years; the chief engineer, 26 years; the first assistant on duty, 26 years.

Now as to the steamer *Ashcroft*. Remember, being a Canadian vessel, she is entirely outside of the control of the United States Coast Guard. It is reported that her master was a man of many years' experience and she had a full complement of licensed officers and crew.

With respect to this matter of age of the crew of the ill-fated steamer *Reed,* she did have four boys on board who were 17 years of age, of whom one was an ordinary seaman, a deckhand; one was a fireman; one was a coal passer (unfortunately was lost); and one was a porter. And may I note in passing that not one of them had even a remote responsibility for her safe navigation.

But when we are talking about young men serving on our Lakes today, let me remind you that there are thousands of 17-year-old youngsters serving not only in our ocean Merchant Marine but in our Navy and Marine Corps, and proud of it. As one 17-year-old told me just a week ago, the Navy had made a man of him and put 35 pounds of weight on his body in the 9 months he had been in it. Regardless of this fact, it is not the Coast Guard's fault that the President of the United States, or the Secretary of the Navy, or the War Manpower Commission have issued regulations relaxing our age requirements on the decks and in the engine rooms of our Great Lakes steamers, in order to better prosecute the war effort and keep our United Nations' lifeblood of iron ore, coal, and limestone flowing to the blast furnaces. This is a further interesting fact. The War Manpower Commission has just within the past few days issued a directive that 16-year-olds as well as 17-year-olds may hereafter be employed on ocean-going vessels in the Merchant Marine and in view of this the United States Maritime Service's Recruiting and Manning Organization is now advertising for such recruits for ocean service.

With respect to the collision between the steamers *Frank E. Vigor* and the *Philip Minch.* Captain Donald Aston was the master of the steamer *Vigor* and is a man 48 years of age who has had 15 years' experience as a licensed officer and has sailed ships for some 8 years as a skipper. His wheelsman had had 6½ years' experience; his lookout 5½ years—part on the ocean and part on the Lakes; his chief engineer, 11 years' experience; his oiler, 2½ years and had been through the maritime school and had sailed 2 years on the Lakes.

On the steamer *Philip Minch* was Capt. Arthur E. Rankin, who is 63 years of age and for 34 years has been a master of Great Lakes vessels working for the same com-

pany. His wheelsman had had 25 years' experience as a wheelsman; his lookout 10 years' experience as a lookout, and both these gentlemen have held AB certificates for many years.

These are the men, the experienced men, who were on active duty at their respective posts at the time of the collisions. They were appalled at those collisions. They probably have suffered no end of mental torture since, but surely it cannot be said of them—nor can it be said of the gallant Coast Guard—that they are guilty of carelessness, ignorance, or neglect. These brave men fell prey to the hazards of the sea. Theirs has been a tragic experience that they will never forget, because their own shipmates today are among the missing. Theirs has been one of those tragic experiences for which it ill behooves any man to seek to chastise them or cast reflection upon any of them when perchance the evidence is clear, in fact—in this instance—very clear, that the motive behind such accusations is selfish in its origin, selfish in its nature, selfish in its very utterance. The seamen of the Great Lakes with whom it was my privilege to be associated actively for many, many years, are my best friends. They, I am sure, resent these false accusations, these slurs and denunciations that have caused me to make this public reply not only over the radio but in the House of Representatives itself.

Having been connected with the shipping industry on the Lakes for so many years I do not hesitate to admit that the industry is not perfect, that there is room for improvement. What is perfect today? That is why we have for many years put erasers on lead pencils. I certainly would be the last man in the world to deny to any sailor on the Great Lakes the right to freely join any union organization that he desires, but I do want to say this in closing. I am not interested in any union organization campaign or any other controversy between any union or shipowner. But when union organizers start broadcasting or making accusations either against the boys or the masters or the engineers who sail the Great Lakes, or against the United States Coast Guard, then I am interested for I insist the true facts be stated and made known, and the punches be kept above the belt at all times.

BOARD'S EXHIBIT 5.

Stipulation for Certification Upon Consent Election.

(Received in Evidence July 28, 1945.)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION EIGHTH

IN THE MATTER OF THE PITTSBURGH STEAMSHIP COMPANY and NATIONAL MARITIME UNION OF AMERICA (CIO).	CASE No. 8-R-1324

STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION.

This STIPULATION, made and entered into this 15th day of December, 1943, by and between THE PITTSBURGH STEAMSHIP COMPANY (herein called the Employer) and NATIONAL MARITIME UNION OF AMERICA (CIO) (herein called the Union):

A Petition for Investigation and Certification of Representatives, pursuant to Section 9 (c) of the National Labor Relations Act (herein called the Act), having been filed by the Union with the Regional Director for the Eighth Region of the National Labor Relations Board (herein called the Regional Director and the Board, respectively), alleging that a question has arisen with respect to the representation for purposes of collective bargaining of certain employees of the Employer:

IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

I. *Question Concerning Representation*: The Employer declines to recognize the Union as the exclusive representative of the employees within the unit described in Paragraph IV, unless the Union is certified as such exclusive representative by the Board.

II. *Commerce*: The Pittsburgh Steamship Company is a West Virginia corporation with an office at Cleveland, Ohio. The Company is engaged in the operation of sev-

enty-eight bulk freighters on the Great Lakes. The combined carrying capacity of all vessels is approximately 825,000 gross tons. In 1943 the Company employed approximately 2000 employees in the hereinafter defined unit.

The Company is engaged in commerce within the meaning of Section 2 (6) of the Act, and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9 (c) of the Act.

III. *Labor Organization*: The Union is a labor organization within the meaning of Section 2, subsection 5, of the National Labor Relations Act.

IV. *Unit*: All unlicensed personnel on all vessels operated by the Company on the Great Lakes (herein called the Unit), constitute a unit appropriate for the purposes of collective bargaining.

V. *Secret Ballot*: An election by secret ballot shall be conducted under the direction and supervision of the Regional Director among all employees in the Unit who were employed by the Employer during the pay-roll period ending May 15, 1944, including employees who did not work during such pay-roll period because they were ill or on vacation or temporarily laid off,[1] but excluding employees who have since quit or been discharged for cause, to determine whether or not they desire to be represented by the Union for purposes of collective bargaining.

VI. *Time and Place*: The election shall be held on the Company's vessels and the polls shall be open at suitable hours after docking, at various ports, beginning June 1, 1944 and said election shall continue from day to day without delay. Employees will not lose pay while voting.

VII. *Notices of Election:* The Regional Director shall prepare and supply to the parties hereto at least 10 days before the election "Notices of Election" describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The Employer, upon

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[1] Employees in the military service or training of the United States are also eligible to vote if available. In order, however, that the election result will reflect the existing situation at this time in the Employer's operations here involved, such persons will not be added to the eligibility list unless they actually appear at the polling place to cast ballots.

the request of and at a time designated by the Regional Director, will post such "Notices of Election" at conspicuous and usual posting places easily accessible to the eligible voters.

VIII. *Observers:* The ballots shall be handled and the votes shall be counted and tabulated as soon after the election as feasible by the Regional Director, or his agent or agents. The Employer and the Union will each be allowed to station an equal number of authorized observers, selected from among the non-supervisory employees of the Employer, at the polling place during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally. Upon the conclusion of the counting the Regional Director shall supply a copy of the tabulation of votes to each party's observers.

IX. *Eligible List:* At least 15 days before the election the Employer will furnish to the Regional Director an accurate list of all of the eligible voters as described in Sections IV and V above, together with a list of the employees, if any, specifically excluded from eligibility by such sections.

X. *Post-Election Procedure*: All procedures subsequent to the election shall be in conformity with Article III, Section 10, of the Rules and Regulations of the Board as amended.

XI. *Waiver*: Hearing and Notice thereof provided for under Section 9 (c) of the Act, Direction of Election, and the making of Findings of Fact and Conclusions of Law by the Board prior to the election are hereby expressly waived.

XII. *Record*: The record in this case shall be the same as that required by Article III, Section 10, of the Rules and Regulations of the Board as amended, supplemented by the Petition for Investigation and Certification of Representatives and this Stipulation. It is agreed that upon such record the Board may, by issuance of its Decision and Certification of Representatives, certify the Union as the exclusive representative of all employees in the unit for the purposes of collective bargaining or make other disposition of the matter.

XIII. *Approval*: This Stipulation is subject to the approval of the Regional Director.

RECOMMENDED:
LOUIS PLOST,
Field Examiner,
National Labor Relations Board.

THE PITTSBURGH STEAMSHIP COMPANY
By /s/ A. H. FERBERT

APPROVED 3/6, 1944
WALTER E. TAAG,
Regional Director,
National Labor Relations Board.

NATIONAL MARITIME UNION OF AMERICA (CIO)
By /s/ FRANK JONES
Port Agent

BOARD'S EXHIBIT 6.

Decision and Order of the Board in Case No. 8-R-1324.

(Received in Evidence July 28, 1945.)

(For Release Afternoon Papers July 1, 1944.)

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of THE PITTSBURGH STEAMSHIP COMPANY and NATIONAL MARITIME UNION OF AMERICA (CIO).	CASE No. 8-R-1324

DECISION AND ORDER.

STATEMENT OF THE CASE.

On November 8, 1943, National Maritime Union of America (CIO), herein called the Union, filed with the Regional Director for the Eighth Region (Cleveland, Ohio) a petition alleging that a question affecting commerce has arisen concerning representation of employees of The Pitts-

burgh Steamship Company, Cleveland, Ohio, herein called the Company, and requesting an investigation and certification of representatives, pursuant to Section 9 (c) of the National Labor Relations Act, herein called the Act. On December 15, 1943, the Company, the Union, and a representative of the Board entered into a "STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION."

Pursuant to the stipulation, an election by secret ballot was conducted under the direction and supervision of the Regional Director, among all employees in the stipulated unit, to determine whether or not the said employees desired to be represented by the Union for the purposes of collective bargaining. Upon the conclusion of the election, a Tally of Ballots was furnished the parties in accordance with the Rules and Regulations of the Board. No objections were filed by any of the parties within the time provided therefor.

The tally shows that of the approximately 1,650 eligible voters, 1,609 cast valid votes, of which 720 were for the Union and 889 against. Thirty-three ballots were challenged, but since they cannot affect the results of the election, we find it unnecessary to make any determination with respect thereto. Since no collective bargaining representative has been selected by a majority of the employees of the Company in the stipulated unit, we shall dismiss the petition for investigation and certification of employees.

ORDER.

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act,

IT IS HEREBY ORDERED that the petition for investigation and certification of representatives of employees of The Pittsburgh Steamship Company, Cleveland, Ohio, filed by National Maritime Union of America (CIO), be, and it hereby is, dismissed.

Signed at Washington, D. C., this day of June 1944.

HARRY A. MILLIS, *Chairman*
GERARD D. REILLY, *Member*
JOHN M. HOUSTON, *Member*
NATIONAL LABOR RELATIONS BOARD

BOARD'S EXHIBIT 7.

Pamphlet Published by the National Maritime Union.

(Received in Evidence October 2, 1945.)

[Photographs and comic sketches omitted.]

THE N M U FIGHTS JIM CROW

by FERDINAND C. SMITH

"It wasn't until the National Maritime Union enunciated and fought for the principles of no discrimination that I was able to get an appointment."

—CAPT. H. MULZAC.

FOREWORD.

There are two stories in this pamphlet—both very important.

Look at the cartoon story first. With bitter irony, cartoonist Fred Wright has shown the great injustice often done to the Negroes in our country.

The story in words tells how the National Maritime Union fights that injustice. It cites chapter and verse of our continued efforts to end race discrimination.

We are proud of that story. We are proud of the fact that our union was one of six groups chosen in a nationwide poll to determine who had done most for the improvement of race relations "in terms of real democracy."

The director of the Schomburg collection of Negro Literature of the New York Public Library, in announcing the results of the poll, cited the NMU "for supporting Captain Mulzac in his fight for recognition and for its uncompromising stand against racial discrimination in the employment of its members."

One hundred and fifty years ago the Founding Fathers of this country wrote "All men are created equal."

We believe that is true.

And—as this pamphlet indicates—we are prepared to carry on the fight to prove it.

Joseph Curran, *President*
National Maritime Union, CIO

Seventy-five years ago a leader in the march of the dispossessed toward a decent standard of living wrote these words: "Labor with a white skin can never be free while labor with a black skin is branded."

The members of the National Maritime Union have learned the truth of this observation by Karl Marx. We learned it on the picket line when we were carrying on the struggle to organize; we have learned it over and over again since.

We won't ever forget it for the simple reason that the shipowners won't let us. They give us ample opportunity to drive the lesson home with their persistent efforts to discriminate against our Negro members. We make the most of these opportunities. By meeting the issue head-on, we are able to expose the shipowners' tactics for what they are —attempts to create disunity in our ranks.

A letter in the *NMU Pilot*, a year ago, tells the story briefly and clearly:

SS Siletz.

Editor:

The issue of discrimination against Negroes in the Grace Line was dumped into the company's lap today.

Three Negro brothers were shipped aboard the "Siletz" along with three white brothers. At the front office we met with the argument that the Negro brothers couldn't be hired because the crew wouldn't accept them.

We then went aboard the ship and nailed this lie. We called a meeting of the crew and explained the issue. The crew immediately, unanimously repudiated the company's attempt to institute the old "divide and rule" policy and voted to accept the Negro brothers.

We intend to fight to the last to prevent the shipowners from driving a wedge into the Union and splitting the growing unity between the white and Negro members.

We have taken this beef to the Union and intend to see it through to prevent the shipowners from discriminating against our Negro brothers. They pay their dues and meet all of their obligations to the Union and are entitled to equal shipping rights on the rotary basis.

D. Kingsbury
J. Green
Edward Snow
Benjamin Hopkins
J. Lawrence
J. Edwards

The key to the handling of this situation is in the words, "We then went aboard the ship and nailed this lie." Confronted with the usual assertion that it was not the company but the crew which was opposed to the hiring of Negroes, these NMU members wasted no time in argument. *They went aboard the ship and nailed the lie.* That is the one sure way of handling the problem.

On January 2, 1942, the Swedish luxury liner, *Kungsholm*, lay in the Port of New York ready to sail. She had been taken over by the United States Lines and converted into a troopship. That afternoon, the company called the union hall for 140 seamen to man the liner. The union dispatcher sent the men. One hundred and fifteen were accepted. The assignment cards of the other 25 were marked "not acceptable." They were Negroes.

The NMU is committed to a policy of all-out effort to win the war. We wanted the ship to sail on scheduled time. But we are also committed to a policy of no discrimination. We wanted those 25 Negroes to sail on that ship.

So union officials acted promptly. Joseph Curran, president of the National Maritime Union, sent a wire to the President of the United States, protesting the rejection of the 25 Negroes.

The wire brought quick results. The next morning company officials phoned the hall and informed us that the Negroes were now "acceptable." When the ship sailed, the 25 men were aboard.

That prompt action by the NMU won more than a victory in this single case. It resulted in a forthright statement of policy by the President of the United States, which has become a powerful weapon in our hands in our fight against discrimination. Here it is:

The White House
Washington

January 14, 1942.

Mr. Joseph Curran, President,
National Maritime Union,
346 West 17th Street,
New York, N. Y.

My dear Mr. Curran:

I am informed that the discrimination against colored seamen, referred to in your telegram of January

2nd, was eliminated by the action of the United States Maritime Commission on the day it occurred.

It is the policy of the Government of the United States to encourage full participation in the National Defense program by all citizens, regardless of race, creed, color, or national origin, in the firm belief that the democratic way of life within the nation can be defended successfully only with the help and support of all groups within its borders.

The policy was stated in my Executive Order signed on June 25, 1941. The order instructed all parties making contracts with the Government of the United States to include in all defense contracts thereafter a provision obligating the contractor not to discriminate against any worker because of race, creed, color or national origin.

Questions of race, creed and color have no place in determining who are to man our ships. The sole qualifications for a worker in the maritime industry, as well as in any other industry, should be his loyalty and his professional or technical ability and training.

Sincerely yours,

(Signed) Franklin D. Roosevelt.

The *Kungsholm* episode wasn't ended until three months later, when the crew returned from its voyage. On the basis of their experience together in which all the facilities of the ship, including foc'sle, messrooms, toilets, etc., were shared by Negroes and whites without any trouble whatsoever, the members of the crew at their last ship's meeting adopted this resolution unanimously:

It is only through unity of all people that we can successfully win this war, regardless of race, color or creed, and

Our President has stated that discrimination is a threat to our national safety, and

On this ship colored and white seamen have sailed together in perfect friendship and harmony.

Therefore be it resolved that we go on record against any form of discrimination in our union or in any defense industry.

The members of the National Maritime Union are not theorizing when they say that the only solution to the problem of racial discrimination is real equality. On the *Kungsholm* and hundreds of other ships, white and Negro seamen eat, sleep, study and work together. That's why the NMU says it can be done. We have tried it. It works.

Nevertheless, the fight against discrimination is a never-ending one. A few days after President Roosevelt declared in no uncertain terms that, "Questions of race, creed, and color have no place in determining who are to man our ships," four ablebodied Negro seamen, sent by the Union to man the *Mormacport*, a new Government-built cargo ship of the Moore-McCormack Lines, were told they were "not wanted."

The rest of the crew promptly held a meeting and voted not to sail unless the men were hired. The ship sailed,—with the four Negroes.

Did officials of the company give in because they had seen the error of their ways? Did they applaud the stand of NMU members who insisted that President Roosevelt's declaration of policy was to be followed? They did not. A *PM* reporter discussed the incident with Robert C. Lee, executive vice president of the Moore-McCormack Lines. Mr. Lee's amazing—and dangerous—attitude was exposed in the course of the interview:

"We'll take colored men provided the whites don't object. That's positively the only basis I'd accept."

"Did the white men object in this case?" he was asked.

"Probably not," said Lee. "They're all Commies."

For Commander Lee, the fact that these white NMU members took seriously the President's statement that "the democratic way of life within the nation can be defended successfully only with the help and support of all groups within its borders," was proof sufficient that they were all Communists! What price true patriotism?

If shipping companies employed only the one gag that "the crew won't accept Negroes," our course of action would be simple. But they don't. Their attempts to dis-

criminate are varied and devious, and we have to be on the lookout continually.

Take the case of Philip Nazareth (what a commentary on the practice of discrimination is his name alone!). In May, 1942, he was shipped as a fireman out of the NMU hall in San Francisco, according to our regular rotary hiring system. When he got to the ship, a Gulf Oil Company vessel, there was a mix-up of some kind and he was not signed on. He returned to the hall and told his story to the NMU port agent. A special meeting of the entire crew was called by Agent Williams and a vote was taken to accept Brother Nazareth immediately.

The next day the company doctor came aboard and rejected him on the alleged grounds that he had a throat infection and high blood pressure. Agent Williams then took him to the Public Health Service office where the doctor said there was nothing the matter with him. Then, to make the case airtight, Brother Nazareth was taken to the U. S. Marine Hospital for a check-up by specialists. They gave him a clean bill of health, said he was fit for duty, and put it in writing with a government seal.

Thus armed, Brother Nazareth returned to his ship. But the captain said he would not recognize the decision of the government specialists,—he would stand by the company doctor's diagnosis. Here Agent Williams again intervened. He insisted that the captain live up to the agreement which called for examination by a neutral doctor in case of dispute.

A physician was picked at random from the phone book. He gave Brother Nazareth a complete physical examination, and said there was nothing wrong with him that would prevent his shipping out. So Brother Nazareth, at long last, was signed on with full pay for the time he missed due to his rejection. Another victory in the fight against discrimination.

For six days, from March 3 to March 9, 1942, the NMU carried on a dispute with the Lykes Brothers Company because the master of the *S. S. American Press* refused to accept three Negro replacements sent from the union hall. The ship finally sailed on scheduled time with the three Negroes aboard.

The incident was not an unusual one and would not have been mentioned in this article except for two notable facts. The union hall was located in Texas City. And the majority of the members of the crew who signed a statement saying that they had "no objections to sailing with colored members in our all-out effort to win the war against Fascism," were *seamen coming from Southern states.*

That fact has greater significance for outsiders than it has for us in the NMU, because we know what prompted that action by Southerners. We know that it is the result of an intensive, persistent campaign of education at union meetings and aboard ships against racial discrimination of any kind.

We know, too, that it is the result of practicing racial equality and finding that it is not only possible, but a positive good. And finally, we know that it is the result of a recognition of the fact that Negro seamen measure up, in every way, to the requirements of their particular jobs.

We knew that Hugh Mulzac could command a ship—if he were ever given the chance. That chance didn't come for only one reason—Hugh Mulzac was a Negro.

It didn't matter that this man had been going to sea on steam and sailing vessels for over 35 years. It didn't matter that he had sailed as A.B., quartermaster, bos'n, third mate, second mate, and chief officer on British and American ships. It didn't matter that he was a graduate of the U. S. Shipping Board School and was awarded its certificate in 1918, that he held also a diploma in navigation and radio from the International Correspondence Nautical School, and a certificate from the Sperry Gyro Compass School.

It didn't matter that as far back as 1922 he had passed his examination as Master of ocean going steamers unlimited, and was, therefore, qualified to command any merchant ship of any tonnage on any ocean.

None of these things made any difference. He was a Negro—so for over 20 years he had to sail as a steward or cook. When he made application at the shipping lines for the position of Master to which he was rightfully entitled by training and experience, he was given the usual run around. "Sorry we're all filled up" . . . "Leave your name and address and we'll see what we can do" . . . "We've got

a lot of white men who will have to be shipped first" . . . "We'll file your application. . . ."

The National Maritime Union fought this case with all its strength. From every port in the country, from ships on every sea, resolutions and telegrams of protest went to the authorities in Washington. Then, in cooperation with the Negro Labor Victory Committee and other interested groups, we organized delegations to Washington to argue the case in person.

We won that fight. On Sept. 23, 1942 Captain Edward Macauley of the War Shipping Administration announced the appointment of Captain Hugh Mulzac to command the new Liberty freighter *Booker T. Washington*. And to make the victory over Jim Crow doubly significant, the ship was launched by the great Negro singer, Marian Anderson.

On National Maritime Day, May 22, 1942, Mayor F. H. LaGuardia of New York City awarded medals to thirteen NMU seamen who had distinguished themselves by their heroic conduct "above and beyond the call of duty." Four of the thirteen were Negroes.

About ten percent of the men and women in the NMU are Negroes. They are illustrious members of a brave company who are determined to deliver the goods and Keep 'Em Sailing, no matter what the cost. They are adding a new and glorious chapter to the history of the American merchant marine.

Let it not be thought that this is the first time in our history that Negroes have performed outstanding deeds of valor on the sea. Not at all. Negro seamen, from the beginning of our country, in every period of crisis, have rendered effective and heroic service. This letter by the commander of the privateer, *Governor Tompkins*, engaged in one of the battles of the War of 1812, proves the point:

At sea, January 1, 1813.

> Before I could get our light sails in, and almost before I could turn around, I was under the guns, not of a transport, but of a large *frigate!* and not more than a quarter of a mile from her. . . . Her first broadside killed two men, and wounded six others. . . . The name of one of my poor fellows who was killed ought

to be registered in the book of fame, and remembered with reverence as long as bravery is considered a virtue. He was a black man, by the name of John Johnson. A twenty-four-pound shot struck him in the hip and took away all the lower part of his body. In this state the poor brave fellow lay on the deck, and several times exclaimed to his shipmates: *"Fire away, my boys: no haul a color down!"* The other was also a black man, by the name of John Davis, and was struck in much the same way. He fell near me, and several times requested to be thrown overboard, saying he was only in the way of others. When America has such tars, she has little to fear from the tyrants of the ocean.

The commander of the privateer was wrong in one respect. It is not enough that "America has such tars." America must be ready, willing and eager to give them opportunity to show their mettle.

Unless America does so, she has much to fear,—not alone from the tyrants abroad, but also from the tyrants at home.

The members of the National Maritime Union are determined that these brave seamen will be given that opportunity—for their country's sake as well as their own.

What do you think of this pamphlet?

Good .....
Bad .....

(Please check)

Additional comments: .....
.....
.....
.....

Are you a member of the NMU?
Yes..... No.....

Please send me more material on the Union.....
If not a member do you wish to join?.....
Name .....
Name of ship.....
Name of Company.....
Home address .....

Cut along dotted line and mail to
Educational Department
NATIONAL MARITIME UNION
346 West 17th Street
New York, N. Y.

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BOARD'S EXHIBIT 8.

Agreement, April 30, 1943, between Nicholson Transit Co. and National Maritime Union.

(Received in Evidence October 2, 1945.)

NICHOLSON AGREEMENT.

This Agreement made this 30th day of April 1943, by and between the NICHOLSON TRANSIT COMPANY, a corporation of the State of Michigan, hereinafter referred to as the COMPANY, and the NATIONAL MARITIME UNION OF AMERICA, hereinafter referred to as the UNION, in its own behalf and in behalf of the unlicensed personnel employed on all vessels owned, operated or chartered bareboat by the Company on the Great Lakes.

WITNESSETH: It is the desire of the Union and the Company to enter into an Agreement which will prevent strikes and lockouts and ensure peaceful adjustment and settlement of all grievances, disputes and differences which may arise between the Company and the unlicensed personnel; prevent stoppages of work; and tend to stabilize and strengthen the shipping industry; and to establish wage scales and working conditions which will prevail between the parties hereto during the existence of this agreement.

ARTICLE I.

General Rules

Section 1. The Company, in entering into this agreement, hereby recognizes the Union as the sole collective bargaining agent for the unlicensed personnel employed on all vessels owned or chartered bareboat by the Company on the Great Lakes and tributary waters.

Section 2. The Union agrees to furnish satisfactory men and the Company agrees that during the period that this agreement is in effect all replacements, except as provided in sub-section C of this section, shall be hired through the offices of the Union, as vacancies occur. The Company may reject such replacements provided:

A. The rejections are for valid reasons.

B. The Company states in writing on the assignment slip to the officers of the Union the reasons for such rejections, and that the Union shall have the right to take up such rejections under the grievance machinery as outlined in sub-sections 3 and 4 of Section 7 of Article I of this agreement.

C. If the Union cannot furnish replacements by one hour of sailing time, the Company shall have the right to obtain replacements wherever possible.

Section 3. The Union and the Company shall recognize that the basis for seniority shall be the term of service with the Company, provided such service is accumulated by actual time served on the Company's vessels only. For the purposes of this section, each vessel shall be a separate unit with said seniority rule applying to each vessel.

Section 4. The provisions of this contract shall apply to all employees covered by this agreement, without discrimination on account of race, color, national origin or creed, except as provided by Federal laws, rules, and regulations.

Section 5. The Company shall issue a pass to the designated representative of the Union in all ports to board the vessels and enter the Company docks for the purpose of consulting with the unlicensed personnel employed thereon, provided, however, the Union representative shall neither violate any provision of this agreement or interfere

or retard the work of the vessel, subject to penalty of revoking of the pass granted herein.

B. The Union shall take out insurance which will protect the Company and/or its agents, charter or subsidiary, or affiliated companies from any claim, loss, damage, or liability for the loss of life or injury occurring to the representative of the Union while on the property or aboard any vessel owned, chartered, or leased by any of the above mentioned parties. Evidence that such insurance protecting the Company and/or its agents, chartered operators and subsidiaries has been taken out and is in full force, shall be submitted to the Company.

Section 6. A. The Union agrees that there shall be no strikes, slow downs, sit downs, or stoppages of work while this agreement is in effect.

B. The Company agrees that during the life of the Agreement and/or any period of negotiations for modification or renewal, there shall be no lockouts of the unlicensed personnel; however, this section shall not prevent the orderly termination by the Company of the employment of unlicensed personnel on any of its vessels, as in the manner provided by the Shipping Articles, nor shall it prevent the discharge of any member of the unlicensed personnel provided that the Union shall have the right to take up such discharge as provided for in sub-sections 3 and 4 as outlined in Section 7, Article I, of this agreement.

Section 7. Any dispute or grievance arising in connection with the terms and provisions of the agreement shall be settled according to the following procedure:

A. The unlicensed personnel of each department employed on the Company's vessels may select a representative from their respective department; an additional representative may be selected as ship's delegate, as prescribed by the Union. The four shall be the Union's representatives aboard the vessel.

Any employee who feels that he has been unjustly treated or has been subjected to unfair conditions shall endeavor to have said grievance adjusted in the following order:

1. Presentation of this complaint to the head of the department in which the employee is employed, or through

the department representative. Said grievance shall be registered within twenty-four (24) hours after its occurrence.

2. Appeal directly to the Master.

3. Appeal to the management's representatives through the Union's port representatives.

4. Appeal the, if necessary, shall be in writing to the authorized representatives of the Union and the Company's marine superintendent of the marine department, or any person designated by him.

B. As all the above steps must be followed in the order given, as a matter of good order and discipline, it is understood and agreed that nothing contained in this agreement is intended to or shall be construed to restrict in any way the authority of the Master or prevent the obedience of any member of the crew to any lawful order of any superior officer.

C. Any work for the safety of the vessel, passengers, crew or cargo, or for the safety of other vessels or lives in jeopardy, shall be performed at any time on immediate call by any and all unlicensed personnel, in conformity with the law; and in no event shall overtime be paid for such duties. This section shall be without prejudice for salvage which the unlicensed personnel may have.

Section 8. If any controversy or grievance arising under the terms of this agreement is not amicably adjusted and settled in the manner hereinbefore provided, same shall be submitted, under conditions to be mutually agreed upon at the time, to a Board of Arbitration that shall be selected as follows:

A. One, two or three members to be chosen by the Company with three votes in all, and three to be chosen by the Union with one vote each. These members must meet within 48 hours after receipt of written notification from either party (Saturdays, Sundays and holidays excluded); and at that meeting shall select a neutral member. The decision of the Board shall be rendered within 72 hours unless, by agreement, the time is extended by 72-hour periods. The decision of the majority vote of said Board shall be final and binding on both the Company and the Union in such controversy or grievance and shall conclu-

sively determine the same. The Company and the Union shall bear the expenses of their respective representatives, but shall share equally the expense of the neutral member.

B. Under no conditions shall there be a cessation of work, strikes, sit downs or slow downs of any nature, or lockout, while arbitration or adjustment of the dispute is in process of being settled, as herein agreed upon.

Section 9. No member of the Union employed on any vessel operated by the Company shall be required to subscribe to or become a member of any benefit society, club or organization instituted or sponsored by the Company. In the event that any employee is now a member of such benefit society, club or organization, he may terminate his membership therein at any time and such termination shall not act prejudicially against his present or future employment with the Company.

Section 10. The unlicensed personnel shall submit to and undergo such medical examination as is or may be required by the Company from time to time, and the Company shall retain the right to reject such unlicensed personnel as may be determined by the Company's medical examiners to be unfit for employment in keeping with the Company's regulations.

The Company agrees to review carefully any case which the medical examiner of the Union certifies to be free from communicable disease and disabling defects and to be able to do the work applied for by the applicant; and, if a review fails to establish the facts to the mutual satisfaction of the Company's and the Union's medical examiners concerned, an examiner of the Company and of the Union will agree upon a suitable outside doctor whose independent judgment will be determining upon the facts at issue. The expenses of the outside consultant will be borne equally by the Company and the Union.

Section 11. The Company and the Union agree, each in its own behalf, that there shall be no organized discrimination, intimidation, or coercion against any employees because of membership or non-membership in any labor organization.

Section 12. Unlicensed personnel, while employed on board vessels of the Company, shall comply with all lawful

orders of their superior officers; but, at the same time, in order to protect any employee from losing his job unfairly, the Company agrees to review any cases of dismissal brought to its attention by the Union's representatives. If the Union and the Company cannot agree on the facts at issue, same shall be submitted to a Board of Arbitration as provided for in Section 8 of this agreement.

Section 13. The Company shall comply with such laws and regulations as the Secretary of Commerce shall issue through the Bureau of Marine Inspection and Navigation as to all matters relating to manning, quartering, and equipment and conditions and arrangement of the ship. It is agreed that nothing in this Section shall prevent the Company and the Union from adjusting all matters relating to quarters, equipment, conditions and arrangement of the ship through the process of collective bargaining, if permitted by law.

Section 14. The Company shall exercise due diligence in furnishing safe gear and working equipment and shall make every reasonable effort to provide safe working conditions on board ship in accordance with the rules and regulations of the Bureau of Marine Inspection and Navigation. In the interests of safety, the Company agrees that no member of the Union shall be required to pass through a legitimate trade union picket line (the Union's picket lines and picket lines at plants, refineries or docks where the employees thereof are not on strike excepted).

Section 15. Members of the crew employed by the Company shall not be required to handle cargo or otherwise perform longshoremen's work, except where no legitimate are available, and in such cases this shall be construed as extra work to all who handle such cargo and will be paid for at the prevailing Union longshoremen's scale of wages for such work; and in no case at less than the overtime rate provided for in this contract. This section shall not be construed as to apply to any work where longshoremen are not available due to labor trouble.

Section 16. If, due to illness or any other reason, a member of the unlicensed personnel is assigned to another rating higher than his own, he shall receive the higher rate of pay during such assignment; providing, however, that

there shall be no reduction in wages if he is assigned to a lower rating; and his hours shall become the hours of the new assignment. If a day worker is assigned to a watch on a Saturday afternoon, Sunday or holiday, then such day workers shall receive pay at the regular overtime rate for such work.

Section 17. A. When members of the steward's department are required to do extra work because a vessel sailed "short-handed," the wages of the absent workers shall be divided among the employees who perform the extra work. To do this extra work, the employee or employees shall not neglect their regular duties.

B. When members of the unlicensed personnel in the deck and engine departments are required to work in addition to their regular watches because the vessel sailed short-handed, they shall be paid for the extra hours at the overtime rate.

Section 18. Continuous service shall not be determined to be broken by leaves of absence in writing on account of illness, accidents, temporary lay-offs for lack of work, or leaves of absence for valid reasons from the service of the Company.

Section 19. The Company agrees not to discriminate against any members of the unlicensed personnel for Union activities which are not inconsistent with the terms of this agreement. The Union agrees that Union activities entered into by its members will not be permitted to interfere with the proper working of the vessel.

Section 20. Members of the unlicensed personnel shall be on board one hour before sailing time. It is understood and agreed that when possible the Company will post sailing time within two hours after vessel's arrival at dock. Such sailing time will be prominently displayed either on gangway or bulletin boards.

ARTICLE II.

Overtime Schedule

Section 21. The overtime rate for all unlicensed personnel shall be 95¢ per hour. It is agreed that for all work performed in excess of regular watches, the overtime rate shall apply.

Section 22. Overtime shall not in any case be worked without prior authorization of the Master or person acting by authority of the Master.

Section 23. Overtime shall commence at the time any employee shall be called to report for work, provided such employee reports for duty within 15 minutes, otherwise overtime shall commence at the actual time when such employee reports for duty; and such overtime shall continue until the employee is released.

Section 24. Where overtime worked is less than one hour, overtime for one full hour is to be paid. During the first hour men may be assigned to other duties at the discretion of the officer in charge. When the overtime worked exceeds one hour, the overtime work performed thereafter shall be paid for in one-half hour periods, a fractional part of such period to count as one-half hour.

Section 25. When overtime is worked, the employee shall sign the overtime sheets as soon as possible after the completion of the work, which shall also be counter-signed by the department head authorizing the work. Copies of all overtime sheets, both approved, and disputed, shall be sent to the Company's office.

Section 26. No overtime shall be paid for work in addition to the regular schedule in connection with drills, inspections, or examinations required by law, or emergency work required for the safety of passengers, crew, vessel, cargo or other vessel's distress. This clause shall not apply to the annual inspection of the vessel except for drills ordered by the proper port authorities.

Section 27. All money due for approved overtime shall be paid in the following manner:

A. If a man quits or is discharged, he shall be paid approved overtime immediately. If overtime is disputed, same shall be paid at the Company's office when the dispute is settled.

B. If a man remains on the vessel, approved overtime shall be paid at the time of the next regular pay-off.

ARTICLE III.

General Conditions, Holidays, Etc.

Section 28. The Company agrees to recognize the following holidays:

1. New Year's Day
2. Lincoln's Birthday
3. Washington's Birthday
4. Memorial Day
5. Independence Day
6. Labor Day
7. Armistice Day
8. Thanksgiving Day
9. Christmas Day

In the event that any of the above named holidays fall on Sunday, the following Monday shall be observed as the holiday.

Section 29. When travelling in the course of employment from one vessel to another, or from one port to another, unlicensed personnel shall be paid the regular wages of their assignment while enroute; and shall be provided with necessary transportation and subsistence at the rate of $5.00 per day, except when subsistence is included with transportation. When travelling overnight, a berth shall be provided.

Section 30. The following items shall be supplied to the unlicensed personnel:

1. A suitable number of clean blankets.
2. White sheets and pillow cases which shall be changed weekly.
3. Face and bath towels which shall be changed twice weekly.
4. No clean linen or towels shall be furnished until soiled linens and towels have been returned to the Steward.

Section 31. Mattresses or pillows filled with straw or excelsior shall not be supplied. The Company agrees to make every effort to supply mattresses of high grade quality. Recognizing that mattresses are subject to wear and tear and may not always be in sanitary condition, the

Company agrees to replace mattresses and pillows when such replacements are legitimately necessary.

Section 32. All dishes provided shall be crockery ware.

Section 33. A. Suitable percolators to be supplied to each ship.

B. Each bunk shall have bunk lights installed.

C. Lockers of full length to be installed for all employees.

D. Chest of drawers to be placed in every room, where practicable; also drawers under bunks, where practicable.

E. Each vessel is to be furnished with at least one electric washing machine for the use of the crew.

F. When necessary, bunk springs shall be replaced by ones of first-class quality and material.

G. Where practicable and available and necessary, an electric refrigerator shall be supplied to each vessel for the use of the unlicensed personnel. Water coolers and sanitary drinking equipment to be installed for the use of the unlicensed personnel.

H. All stores and provisions to be of standard quality.

Section 34. All quarters and mess rooms shall be adequately ventilated and a sufficient number of electric fans to secure such ventilation shall be installed. When necessary, such spaces shall be suitably screened.

Section 35. All quarters are to be kept free from vermin and clean insofar as possible, and the unlicensed personnel shall cooperate in this respect. The Company agrees to fumigate all quarters regularly when such fumigation is necessary.

Section 36. When crew members are hired and board and room are not furnished, enlisted members of the crew shall receive the following allotments:

A. In lieu of breakfast	$ .75
B. In lieu of dinner	1.00
C. In lieu of supper	1.00
D. In lieu of quarters	2.50 per night

Section 37. Meal hours shall be as follows:

Breakfast	7:30 a.m. to 8:30 a.m.
Dinner	11:30 a.m. to 12:30 p.m.
Supper	5:00 p.m. to 6:00 p.m.

These hours may be varied not to extend one hour either way. One unbroken hour is to be allowed for each meal for each man when off watch; and, if for any reason this meal hour is broken by a company representative, the man is to be recompensed, in addition to his regular wages, at the overtime rate provided in this agreement, unless in emergency.

Section 38. When possible, on all vessels of the Company members of the steward's department shall be assigned to clean the crew's quarters. When this is not possible, men will be assigned to clean their own quarters; and, if done on ship's time, no overtime pay will be allowed. However, if any member of the unlicensed personnel is instructed to clean quarters on his own time, he shall be paid, in addition to his wages, the regular overtime rate. Utility men and deck hands may be assigned to this work.

ARTICLE IV.

Wage Scales: Unlicensed Personnel

Section 39. The scales of wages to apply during the life of this agreement shall be as follows, on the basis of a 30-day month (provided, however, that nothing in this contract contained is intended to provide wages and compensation for time other than during fitting out, navigating season, and laying up):

Deck Department	*Base Scale*
Wheelsman	$181.00 per month
Watchman	178.00
Deck Watch (A. B.)	170.50
Deck Watch (O. S.)	157.00
Deck Hand	143.50

Engine Department	*Base Scale*
Oiler	$178.00
Fireman	178.00
Engine Room Utility Man	143.50
Coal Passer	137.50

Steward's Department

Steward	256.00
Second Cook	170.50
Porter	143.50
Utility Man	143.50
Craneman	247.00

ARTICLE V.

Deck Department Working Rules

Section 40. The hours of all day workers shall be eight hours per day, between the hours of 8:00 a.m. and 5:00 p.m., with one hour off for lunch; and from 8:00 a.m. to 12:00 noon on Saturday.

Section 41. At sea or in port, the crew shall stand regular watches as required by the master, but no unnecessary work, such as scaling, painting, cleaning, polishing brass or other materials, woods, or metals, overhauling and other maintenance work shall be done between the hours of 5:00 p.m. and 6:00 a.m. weekdays or on Saturday afternoons, Sundays and holidays. It is understood and agreed that between the hours of 6:00 a.m. and 8:00 a.m. no chipping, painting, or scaling shall be done.

Section 42. At sea the duty of the Wheelsman is to steer the vessel, and all work required of him distinct from this routine duty shall be paid for at the regular overtime rate. In port he shall stand watch, handle lines, and perform routine work; however, if required to perform unnecessary work, as defined in Section 41 of Article V, between the hours of 5:00 p.m. and 8:00 a.m. weekdays or on Saturday afternoons, Sundays or holidays, he shall be paid, in addition to his wages, the overtime rate.

Section 43. Watchmen and Deckwatchmen: When at sea or in port, the watchmen and deckwatchmen shall stand their regular watches at the option of the master. For all unnecessary work, as defined in Section 41 of Article V, aside from the regular watches, performed between the hours of 5:00 p.m. and 6:00 a.m. weekdays or on Saturday afternoons, Sundays, or holidays, they shall be paid, in addition to their wages, at the overtime rate. This section shall also apply to deck hands where deck hands stand watches.

Section 44. A. Members of the Deck Department engaged in opening and closing of gangways between the hours of 5:00 p.m. and 6:00 a.m. weekdays or on Saturday afternoons, Sundays or holidays, shall be paid, in addition to their regular wages, at the overtime rate.

B. When members of the deck department are required to clean bilges or side tanks during the operating season, each man so engaged shall be paid, in addition to his regular wages, at the overtime rate.

C. On all vessels of the Company overtime will be paid to all members engaged in the opening and closing of hatches, battening down, and securing cargo gear after 5:00 p.m. and before 6:00 a.m. weekdays and on Saturday afternoons, Sundays or holidays. On June 22, 1944, the National War Labor Board ruled:

> "On runs between Detroit and Lake Erie ports, and between Lake Erie ports, unlicensed personnel shall be paid one-half of the overtime rate in addition to regular pay for work entailed in opening and closing hatches, and battening down and securing cargo gear, when done between the hours of 5:00 p.m. and 6:00 a.m. on weekdays or on Saturday afternoons, Sundays or holidays."

Section 45. When members of the deck department are required to sweep and clean cargo holds between the hours of 5:00 p.m. and 6:00 a.m. weekdays, or on Saturday afternoons, Sundays or holidays they shall be paid, in addition to their wages, their regular overtime rate. However, when such work involves penalty cargo, the penalty cargo section of this agreement is applied.

Section 46. A rest period of not less than 15 minutes shall be allowed in the forenoon and in the afternoon of any working day for the day workers, and a rest period of not less than 15 minutes shall be allowed each watch for the men on watch, both at sea and in port. Wheelsmen at sea shall be allowed one-half hour relief on each watch and, in port, shall be allowed a 15 minute rest period.

ARTICLE VI.

Engine Department Working Rules

Section 47. The hours of work for all day workers shall be eight (8) hours per day between the hours of 8:00 a.m. and 5:00 p.m. with one hour off for lunch and from 8:00 a.m. to 12:00 noon on Saturdays.

Section 48. A rest period of not less than 15 minutes shall be allowed in the forenoon and in the afternoon of any working day for the day workers.

Section 49. When members of the engine department are required to carry and stow ship's stores between the hours of 5:00 p.m. and 8:00 a.m. weekdays or on Saturday afternoons, Sundays or holidays, they shall be paid, in addition to their wages, the overtime rate. However, if members of the engine department are required to go on deck to carry stores between the hours of 8:00 a.m. and 5:00 p.m., the overtime rate will apply.

Section 50. Oilers in Port:

A. Oilers in port on reciprocating, turbine or motor vessels, if on watch at anchor or at the dock, may assist in making repairs between the hours of 8:00 a.m. and 5:00 p.m. weekdays. However, between 5:00 p.m. and 8:00 a.m. weekdays, or on Saturday afternoons, Sundays or holidays, no work shall be required of them aside from the regular duties of their watch, except for repairs which cannot be postponed without delaying the vessel.

B. When in port, and if watches are broken, the hours of oilers shall be those of day workers and they shall assist with the repairs in the engine room, as directed by the officer in charge.

Oilers at Sea:

A. Oilers on watch on reciprocating engines: Their work shall consist of oiling main and auxiliary machinery, the steering gear, ice machines and blowers, which may be located outside the engine room spaces. They are to keep hand rails clean and floor plates wiped in the immediate vicinity of moving machinery located in the engine room spaces; and, if water gauges and checks are in the engine room, they may tend water. Oilers on all vessels shall not be required to chip, scale, wash paint or to paint, shine

brass, or perform any other duty aside from the work of their rating.

B. If vessels of the Company are equipped with turbine engines, the following are the duties of oilers on such vessels:

If required to tend water, the oiler's duties shall be as outlined for reciprocating engines. When not required to tend water, oilers may be required to perform maintenance work, said maintenance work not to exceed one hour daily. This maintenance work is to consist of assisting the engineers with repairs and installations.

C. On motor vessels, the duties of oilers shall be governed by the same rules as for vessels with steam reciprocating engines.

Section 51. Duties of Firemen:

A. At sea duties of firemen shall be to fire and tend fires and perform the work of their rating.

B. Firemen in port: In port, if the firemen are required to do any painting or cleaning while standing their regular watches, they shall be paid, in addition to their wages, the regular overtime rate. When standing watches, firemen shall not be required to work in the engine room, unless in emergency.

Section 52. Coalpassers:

A. The duties of coalpassers at sea shall be to perform their regular routine duties in the fire holds; however, when coal is running, coalpassers may be assigned to cleaning duties in the engine room. When the coalpasser starts to pass coal, he is not to be assigned to other duties except in emergency.

B. In port, he may do the cleaning in fire room spaces only; however, if such cleaning is required during the hours of 5:00 p. m. and 6:00 a. m. weekdays or on Saturday afternoons, Sundays or holidays, the coalpasser so engaged shall receive, in addition to his regular wages the overtime rate.

ARTICLE VII.

Steward's Department Working Rules.

Section 53. The chief steward or steward-cook (combination) shall be recognized as the head of the steward's department and shall direct the work of the personnel employed therein. The chief steward or steward-cook (combination) may do any work in the preparation of meals or other work which he deems necessary for the efficient operation of his department.

Section 54. The hours of the steward's department shall be eight (8) hours in a spread of twelve (12) hours, between 6:00 a. m. and 6:00 p. m. Except as specifically provided in this agreement, no overtime or extra pay will be allowed to members of the steward's department.

Section 55. Members of the crew who handle food shall keep themselves clean and sanitary.

Section 56. Members of the steward's department on all vessels shall not be required to do any painting in rooms and quarters during the operating season. If done, they shall be paid at the overtime rate of 95¢ per hour for such work.

Section 57. Members of the steward's department shall not be required to carry on board stores, provisions or laundry; however, members of the steward's department shall stow such stores. Members of the steward's department shall also check and bag the ship's laundry.

Section 58. When a utility man is carried in the steward's department, the duties of such utility man shall be the general cleaning of officers' quarters, making of bunks, and changing of linen when required, and such other work as is directed by the head of his department. It is agreed that under no circumstances shall the utility man work in the preparation and serving of food. He may, however, handle and stow galley stores. His work hours shall be (8) hours in a spread of twelve (12) hours between 6:00 a. m. and 6:00 p. m., as directed by the steward.

Section 59. In port, members of the steward's department, except the utility man, shall be paid 50¢ each for all meal periods during which more than three (3) extra officials or guests are served.

ARTICLE VIII.

Penalty Cargoes and Explosives.

Section 60. It is understood and agreed that if and when vessels of the Company transport penalty cargoes and explosives, that both the Company and the Union shall meet to determine:

1. What cargoes are penalty cargoes.
2. The compensation rate for men on watch working in cargo holds.
3. The compensation rate for men off watch working in cargo holds.
4. The compensation rate when explosives are transported.
5. The compensation rate for handling explosives.

ARTICLE IX.

Fitout and Layup.

Section 61. All members of the unlicensed personnel who lay up vessels of the Company at the close of the operating season shall be entitled to return to their vessels for fitout the following season. Layup is completed for each individual when he is laid off at the end of the season, or during an intermediate layup.

Section 62. In fitting out and laying up vessels, when replacements are necessary the Company will employ members of the Union; and, when meals and/or lodgings are not provided aboard the vessels, the crew shall be paid, in addition to their wages, the subsistence allowances as outlined in sub-sections A, B, C, and D of Section 36 of Article III of this agreement.

Section 63. A. The Company shall provide first class transportation to the vessel to all members of the crew who fit out and complete one voyage. Men who join a vessel during the season and complete the season will be entitled to return fare when the vessel is laid up. In both cases, the fare will be paid in cash or by check upon presentation of a written receipt. When a vessel lays up after having fitted out, members of the crew will receive transportation home. If this vessel fits out again in the course

of the season, the men will be paid fare in the same manner as provided for in this section.

B. Such first-class rail fare, including lower berth when night travel is required, shall be paid within the limits of the Great Lakes area as follows:

A line east and west through Duluth;
A line north and south through Duluth;
A line east and west through St. Louis; and
A line north and south through Buffalo.

To any point outside this area fare will be paid to the nearest railroad station within the above-described area. When daytime travel is possible, daytime travel must be used.

C. For the purposes of this section, the home addresses of the men will be supplied by the Union when the men are assigned to the vessel.

Section 64. The fitout period shall begin when the engine or deck department first reports for work in the spring, and shall be considered as ended at midnight of the day prior to departure.

Section 65. During the layup and fitout periods, the working hours for the deck and engine departments shall be as follows:

Weekdays:	8:00 a. m. to 12:00 noon and 1:00 p. m. to 5:00 p. m.
Saturdays:	8:00 a. m. to 12:00 noon

and any time worked in excess of these hours shall be paid for at the regular overtime rate. When laying up or fitting out vessels, all members of the crew, except those required for safety watches, may be put on day work. In the engine room there shall be at least one fireman or one oiler on watch when steam is up and whichever of these men is on watch shall maintain steam and attend auxiliary machinery as directed by the engineer in charge, without extra compensation. The duties of the men on watch in the engine room shall be as outlined in the engine department working rules. It is understood and agreed that when such men stand watches on Saturday afternoons, Sundays or holidays, they shall be paid, in addition to their wages, the regular overtime rate.

Section 66. The hours of the steward's department shall be eight (8) hours in a spread of twelve (12) hours between 7:00 a. m. and 7:00 p. m. and no overtime or extra pay claims whatsoever will be allowed for the preparation and serving of regular meals and the cleaning of quarters except that for all work before 7:00 a. m. and after 7:00 p. m. the regular overtime rate will be paid, and except that men in the steward's department actually working on Saturday afternoons shall be allowed four (4) hours' overtime, and those actually working on Sundays or holidays shall be allowed eight (8) hours' overtime at the regular overtime rate.

Section 67. When fitting out a vessel, the Company, if possible, shall give the Union seventy-two (72) hours' notice in calling for a crew. In any case, forty-eight (48) hours' notice shall be given.

Section 68. It is further agreed and understood that nothing in this agreement shall be interpreted as defining the legal status of unlicensed employees of the Company during the layup and fitout periods.

ARTICLE X.

Effective Date, Termination and Renewal.

Section 69. Ratification of this agreement shall be conducted in accordance with the rules and regulations of the Union.

Section 70. The base scale of wages as specified in Article IV of this agreement when and if approved by the National War Labor Board shall be retroactive to July 1, 1942.

Section 71. The provisions of this agreement with respect to overtime and extra compensation shall, when approved by the National War Labor Board, be retroactive to the beginning of the fitout from the time each man reports on board for duty for the 1943 season.

Section 72. This agreement shall continue in full force and effect until June 30, 1943, and from year to year thereafter unless at least thirty (30) days prior to the expiration date either party notifies the other, in writing, of its desire to terminate, modify or amend the agreement. If notification of termination is given, the agreement shall

terminate on the expiration date of the year in which the notice is given. If notification of modification only is given, only those provisions in which modification is requested will terminate on the expiration date of the year in which notice is given. In the event notice of termination or modification is given, as herein provided, the parties shall begin negotiations for a new or modified contract, as the case may be, within thirty (30) days from the date of mailing such notice.

Section 73. Notices shall be in writing and shall be sufficient if sent by registered mail, return receipt requested, addressed, if to the Union, to the National Maritime Union of America, CIO, 346 West 17th Street, New York, New York, or to such other address as the Union shall furnish to the Company in writing; and, if to the Company, to Nicholson Transit Company, Box 66, River Rouge, Michigan, or to such other address as the Company shall furnish to the Union in writing.

Section 74. In the event that any provision of this agreement shall, at any time, be declared invalid by any court of competent jurisdiction, such decision shall not invalidate the entire agreement, it being the express intention of the parties hereto that all provisions not declared invalid shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals in the City of Detroit, State of Michigan, on the day and year first above written.

NICHOLSON TRANSIT COMPANY
by WM. F. DEANE, *Vice-President*
W. L. BROWN, *Secretary-Treasurer*

NATIONAL MARITIME UNION OF AMERICA, CIO
by JACK LAWRENSON, *Vice-President*

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RESPONDENT'S EXHIBIT 1.

Letter, August 17, 1945, Duncan, Leckie, McCreary, Schlitz & Hinslea to National Labor Relations Board.

(Received in Evidence September 5, 1945.)

(Copy)

August 17, 1945.

National Labor Relations Board,
Public Square Building,
Cleveland, Ohio.

Mr. Louis Belkin

Gentlemen:

Pittsburgh Steamship Company—National Maritime Union—Case No. 8-C-1696.

Confirming our conference with you and Mr. Ray this afternoon in which we discussed the most practical method of presenting Respondent's testimony.

We believed that the most logical place to take this testimony would be Duluth, Minnesota, where most of the Respondent's ships proceed to load iron ore. As an experiment, we proceeded to Duluth on August 3rd in order to investigate the allegations made by the Union and worked continuously night and day, arriving home on August 15th. We worked both the ports of Two Harbors and Duluth and in that time we were only able to catch eleven ships and there were but one or two witnesses on each ship. This experiment has led us to the belief that the taking of the testimony will consume a long time and be a night and day job. We still believe that it would be better for all concerned to postpone the taking of testimony until the close of navigation, which would be the early part of November, but rather than have accusations made of "stalling tactics," we are quite willing to meet with you ~~and the~~ Examiner in Duluth on August 28th and take such testimony from witnesses on ships as we have been able to interview as they arrive in Duluth or Two Harbors. We cannot tell you at this time whether or not there will be a ship in, which has any witnesses on it on the 28th, but at least we will be available if that occurs. We would then be willing to remain in Duluth until September 6th and if we have not completed our testimony,

an adjournment be had when we could continue our investigation and then arrange a new date for the taking of testimony and after several bites, we might be able to conclude our case.

In writing for reservations for ourselves as suggested, we will reserve a room for you and Mr. Leff at the Hotel Duluth for August 27th. We have also arranged for accommodations at the Hotel for the taking of testimony and instead of having to go to the ship, we will bring the witnesses to the Hotel, be it night or day.

Respectfully yours,

DUNCAN LECKIE MCCREARY SCHLITZ & HINSLEA

By Lee C. Hinslea

LCH:hs

RESPONDENT'S EXHIBIT 2.

Letter, October 1, 1945, Chester R. Zeiss to W. C. Garbutt.

(Received in Evidence October 2, 1945.)

CHESTER R. ZEISS
Physician and Surgeon
Doctors' Building
1150 West 78th Street
Chicago, Ill.

October 1, 1945

Mr. W. C. Garbutt
Pittsburgh Steamship Company
614 Superior Avenue N.W.
Cleveland, Ohio

Dear Sir:

Please be advised that Captain Clarence Wallace was examined by me on 9/28/45, and found to be in a very serious physical condition.

He is suffering from a cardiac decompensation associated with hypertension and massive enlargement of the heart. Dyspnea is present without any exertion and this is due to impairment of circulation through the lung fields.

It is my opinion that Captain Wallace is not in satisfactory physical condition to allow him to make the trip to Cleveland.

Yours truly,

CRZ:AW DR. CHESTER R. ZEISS

RESPONDENT'S EXHIBIT 3.

Memorandum, May 6, 1944, Pittsburgh Steamship Co. to Masters and Chief Engineers.

(Received in Evidence October 2, 1945.)

May 6 1944

To Masters and Chief Engineers

With our circular letter of M[illegible] 2 1944 to Masters and Chief Engineers were included copies of a circular letter to unlicensed employes regarding the election to be held on our ships commencing June [illegible].

Only such employes as are aboard our ships on May 26 will be eligible to vote, and the ships' payrolls will be used to determine which of the crew members were in the employ on that date.

Payrolls

In order to carry out the necessary details in connection with the election, the May payrolls of all vessels are to be closed on May 26, and all unlicensed crew members are to be paid up to and including that date regardless of the vessels' location.

The May payrolls must be made up in triplicate, which means that it will be necessary to remove a blank sheet from your payroll pad and insert it in such a position as will produce a legible third copy. More than likely some of our vessels will already have started their May payroll before the receipt of this letter, and in such cases we must ask that such arrangements be made as are necessary to produce the required third copy.

Only the original copy of the payroll is to be forwarded to the office. One copy is to be retained by you

as is our usual practice. Please keep the third copy until a representative of the National Labor Relations Board comes aboard your vessel at Duluth or Two Harbors to conduct the election aboard your ship. He is the only one to whom you should give the third copy of the payroll.

The next regular payroll will be for the period from May 27 to first lower lakes unloading port reached after June 26, except that any crew member desiring to leave the vessel on arrival at a lower lakes unloading port after May 26 should be paid off when he leaves.

Articles

Your present articles of agreement carry through to May 26 or first arrival at a lower lakes unloading port thereafter; new articles of agreement should be signed at that time.

Yours very truly
A H Ferbert
President

RESPONDENT'S EXHIBIT 4.

Circular Letter, May 31, 1944, Pittsburgh Steamship Co. to Masters.

(Received in Evidence October 2, 1945.)

PITTSBURGH STEAMSHIP COMPANY

Cleveland 13, Ohio

May 31, 1944

Circular Letter to Masters:

Under date of May 6 you received a circular with reference to making an extra copy of your May 26 pay roll to be presented to the National Labor Relations Board representative when he comes aboard your ship to conduct the election.

An additional change has now been made by the Board in that all unlicensed men who join your ship between May 25 and June 1 will be eligible to vote. Therefore, be-

fore you hand the Government agent the copy of the pay roll, you must add to it all names of men who have joined your ship between these dates, and strike out the names of any men on the list who have been discharged or who quit between May 25 and June 1 so that there will be a complete list of men on board and eligible to vote as of June 1.

The election will be conducted in your quarters with the following stipulation:

> During the period of voting, which we anticipate will be about forty-five (45) minutes, you are not to be in or about your quarters or any place where you might be in a position to influence any of the men.
>
> This was insisted upon by the Union and approved by the Board.

As each vessel passes the Soo two copies of the sample ballot will be placed aboard . . . one is to be posted in the forward end of your ship and one in the after end.

A. H. FERBERT
President.

RESPONDENT'S EXHIBIT 5.

Circular Letter May 31, 1944, Pittsburgh Steamship Co. to Masters.

(Received in Evidence October 2, 1945.)

PITTSBURGH STEAMSHIP COMPANY

Cleveland 13, Ohio

May 31, 1944

Circular Letter to Masters:

A final meeting has been held at the National Labor Relations Board to work out last minute rules for the election. The important thing in this election is to see that everyone votes; therefore, no matter how you believe a man is going to vote, see that he remains on the ship un-

til the representative of the National Labor Relations Board comes to conduct the election which will be upon the arrival of your ship at the ore dock—even though you arrive during the night. The election commences June 6, and your vessel will be voted as she arrives in Duluth or Two Harbors after that time.

There is to be no electioneering aboard the ship while the boat is in port on that particular trip, and we would ask that someone on watch—someone that you or your mates have confidence in—be posted at the ladder to keep off anyone who is not vouched for by the National Labor Relations' Agent.

There are only three men to run this election; namely, the Government man, the observer from the Union, and the observer from the Company. The two observers will, first, after they get on board, go through the ship with the mate on watch and notify the men that the voting booth is open. The observers and Government Agent will use your office during the voting, and there will be a small table put in your bedroom where the men can vote in privacy. Do not let any other outsider aboard the ship during the election other than the Government man and the two observers.

There have been complaints made by both the Sailors' International Union and the National Maritime Union that the captains, engineers and mates are throwing their newspapers and other literature, mailed to the Soo, overboard, and the men are not getting them. You must see to it that whatever is addressed to the employes is delivered to them. There must be no partiality.

If there are any questions that you still want answered, turn them over to Mr. Carr at Duluth, who will in turn get in touch with us and we will try to get an answer to you promptly.

A. H. FERBERT
President.

RESPONDENT'S EXHIBIT 6.

Memorandum, June 1, 1944, Pittsburgh Steamship Co. to Masters and Chief Engineers Enclosing Letter to All Unlicensed Employees.

(Received in Evidence October 2, 1945.)

PITTSBURGH STEAMSHIP COMPANY

Cleveland 13, Ohio

June 1, 1944

To Masters and Chief Engineers:

Will you please see that all members of the unlicensed crew, in your respective department, receive a copy of the enclosed letter addressed, "To all Unlicensed Employees."

A. H. FERBERT
President.

PRINTER'S NOTE:

The enclosure referred to in the foregoing memorandum appears as Board's Exhibit 3, page 744, *supra,* and is here omitted.

RESPONDENT'S EXHIBIT 7.

Memorandum, May 2, 1944, Pittsburgh Steamship Co. to Masters and Chief Engineers, Enclosing Letter to all Unlicensed Employees.

(Received in Evidence October 2, 1945.)

May 2, 1944

To Masters and Chief Engineers:

The enclosed letter addressed to "All Unlicensed Employees" is self-explanatory.

Will you please see that all members of the unlicensed crew in your respective department receive a copy of same.

A. H. FERBERT
President.

PRINTER'S NOTE:

The enclosure referred to in the foregoing memorandum appears as Board's Exhibit 2, page 743, *supra,* and is here omitted.

COMPANY'S LETTER, OCTOBER 3, 1945, REQUESTING EXTENSION OF TIME TO FILE BRIEF.

October 3, 1945

Mr. Arthur Leff, Trial Examiner,
c/o Chief Trial Examiner,
Rochambeau Building
Washington, D. C.

Dear Sir:

In the Matter of the Pittsburgh Steamship Company
Case No. 8-C-1696

On behalf of the Respondent in the above-entitled matter, we respectfully request an extension of time within which to file a brief to November 15, 1945.

Both Mr. Hinslea and the writer are actively engaged in preparing for the argument of an important limitation of liability case before the United States Circuit Court of Appeals for the Sixth Circuit which will be heard on October 15, 1945. In addition thereto, both Mr. Hinslea and the writer are engaged in the preparation of a brief in representation proceedings involving eight separate steamship companies. The Record in the present proceedings is a long one and the proper preparation of a brief will require the digesting of the testimony of a substantial number of witnesses. In view of Counsel's other commitments, plus the work which will be required in the preparation of the brief itself, we believe the extension requested is justified. A copy of this letter is being sent to Messrs. Belkin and Rosenfeld.

Yours very truly,

DUNCAN LECKIE MCCREARY SCHLITZ & HINSLEA

By /s/ LUCIAN Y. RAY

TELEGRAM, OCTOBER 8, 1945, GRANTING ALL PARTIES EXTENSION OF TIME TO FILE BRIEFS.

TELEGRAM

Official Business—Government Rates
Chg. Appropriation NLRB
AL:ir

October 8, 1945

Duncan, Leckie, McCreary, Schlitz & Hinslea
1970 Union Commerce Building
Cleveland, Ohio

Herman Rosenfeld
291 Broadway
New York City

Louis S. Belkin
National Labor Relations Board
33 Public Square Building
Cleveland, Ohio

Re Pittsburgh Steamship Company, 8-C-1696. All parties granted extension of time to file briefs to November 1, 1945.

ARTHUR LEFF, *Trial Examiner*
National Labor Relations Board

INTERMEDIATE REPORT OF TRIAL EXAMINER.

(Dated December 28, 1945.)

STATEMENT OF THE CASE

Upon an amended charge duly filed by National Maritime Union of America (CIO), herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint dated July 10, 1945, against The Pittsburgh Steamship Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint together with the notice of hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent, (1) from on or about December 15, 1943 to on or about June 17, 1944, engaged in a plan and continuous course of anti-union conduct; (2) since on or about March 15, 1944, urged, persuaded and warned its employees to refrain from joining or retaining membership in the Union, made disparaging remarks to its employees concerning the advantages of union organization, threatened those who joined the Union with dismissal, and threatened a wage reduction and loss of seniority rights if the Union succeeded in winning a representation election; (3) on or about April 23, 1944, discharged Howard Shartle and thereafter refused to reemploy him because of his union membership and activities; and (4) by such acts interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Prior to the hearing, the respondent filed its answer admitting the jurisdictional allegations of the complaint, but denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Cleveland, Ohio, from July 26 to July 28 and on October 2, 1945, and at Duluth, Minnesota, from August 28 to September 5, 1945, before the undersigned, Arthur Leff, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented at the hearing by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. Near the close of the hearing, the undersigned granted a motion of counsel for the Board to conform the pleadings to the proof with respect to minor variances such as dates but not as to any substantive matter. At that time, the respondent moved for an order dismissing the complaint for want of proof. Ruling on the respondent's motion was reserved. It is hereby denied. At the close of the hearing, counsel for the Board and the respondent argued orally before the undersigned, and counsel for all parties subsequently filed briefs with him.

Upon the record thus made and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. The Business of the Respondent

The respondent, a wholly owned subsidiary of the United States Steel Corporation, is a West Virginia corporation which has its home office and principal place of business at Cleveland, Ohio. It is engaged in the operation on the Great Lakes of vessels carrying bulk freight such as coal, iron ore, and limestone on behalf of the United States Steel Corporation to and from various ports on the Great Lakes. The respondent admits that it is engaged in commerce within the meaning of the Act.

II. The Organization Involved

National Maritime Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondent.

III. The Unfair Labor Practice

A. Interference, restraint and coercion

1. Introduction

The respondent operates a fleet of approximately 70 vessels on the Great Lakes where the sailing season, preceded by a short "fit-out" period, generally extends from late March to late November. The seamen on these ships do not necessarily seek or receive employment on the same vessel from season to season; it is common for them to follow their favorite officers and to transfer from one ship to another in succeeding seasons.[1] Negroes are not employed on any of the vessels in the respondent's fleet and never have been, except in the galleys of some of its ships.

Most of the respondent's vessels carry a crew of 36 men, of whom 8 are licensed officers and the remainder members of the unlicensed personnel. The licensed group is composed of the captain or master of the vessel, the chief engineer who is in charge of the engine room employees, 3 mates, rated as "first," "second," and "third," and 3 assistant engineers who are similarly rated. During the

[1] Thus, for example, the record shows that on the *Olds*, where Howard Shartle was discharged, most of those employed in 1944 scattered to various other ships of the fleet in 1945.

1944 sailing season the crew was divided into three shift groups, known as "watches," with a mate and assistant engineer in charge of each watch.[2] At the hearing, the respondent conceded that the captain and the chief engineer were supervisory employees, but it refused to express any position with respect to the supervisory status of the mates and the assistant engineers. The record, however, clearly establishes that the mates and assistant engineers have authority, which in fact they at times exercise, to discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. It is found that *all* members of the licensed personnel are supervisory employees, that their relation to management and to unlicensed employees is such as reasonably to lead the latter to believe that they do represent management, and that their statements and acts as hereinafter described are attributable to the respondent.

Organization of the respondent's employees, who, so far as the record shows, have never been represented by any labor organization, was begun by the Union in 1943 or earlier—the record does not disclose just when. The Union, which does not admit to membership licensed officers, confined its organization efforts to the unlicensed personnel. On November 8, 1943, the Union, claiming a majority, filed with the Board, pursuant to Section 9 (c) of the Act, a petition for the investigation and certification of representatives in a unit composed of all unlicensed personnel in the respondent's Great Lakes vessels. Thereafter, on December 15, 1943, the respondent and the Union entered into a STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION providing for an election among the unlicensed personnel to be held during June of the following sailing season. The election, held from June 6 to June 15, 1944, resulted in the defeat of the Union; of 1609 eligible voters who cast valid ballots, 720 employees voted for and 889 against representation by it.

Most of the incidents narrated below, upon which the allegations of unfair labor practices are predicated, occurred during the approximately 2 months period between

[2] The watches were from 2 to 6 o'clock, 6 to 10 o'clock, and 10 to 2 o'clock. The employees on the respective watches worked both in the forenoon and afternoon during those hours.

the start of the 1944 sailing season and the date of the election, although some occurred thereafter. It is the contention of counsel for the Board that the respondent engaged in a course of conduct which was designed and calculated to insure the defeat of the Union in the election, and, beyond that, to frustrate the organizational efforts of the Union. For convenience in discussion, the claimed incidents which, viewed in totality, are said to constitute the respondent's anti-union course of conduct may be grouped in the following general categories: (a) the respondent's distribution to employees of letters and literature relating to the Union and its campaign; (b) statements and activities of licensed officers aboard the respondent's vessels, including remarks of a threatening and disparaging character, interrogation of employees concerning union membership and activities, abuse of employee organizers, and interference with their organizational efforts; and (c) the discharge of Howard Shartle, an employee organizer of one of the respondent's vessels.

2. The Ferbert letters and the respondent's alleged distribution of other literature

During the period immediately preceding the June 1944 election each of the crew members on board the respondent's vessels received certain letters and literature which counsel for the Board contend were distributed by the respondent in furtherance of its anti-union campaign. Specifically, these were (a) a reprint of a speech critical of the Union made in the House of Representatives by a Michigan congressman; (b) a pamphlet entitled, "NMU Fights Jim Crow"; and (c) two letters addressed to the unlicensed employees by A. H. Ferbert, the respondent's president.

The respondent admitted responsibility for the issuance of the Ferbert letters, but denied that it distributed copies of the speech and pamphlet, both of which, the record establishes, came through the mails. There is no substantial evidence in the record showing that the respondent was responsible for the distribution of the speech. The Jim Crow pamphlet, which set forth the Union's opposition to racial discrimination in employment, was admittedly a publication of the Union. While there is evidence that the Union and its organizers did not issue or use that

pamphlet as part of its campaign to organize the respondent's vessels, and some support for the assertion that the respondent was responsible for its distribution is to be found in the evidence, hereinafter adverted to, showing the manner in which the respondent's supervisory personnel used the pamphlet and its subject matter in playing upon the racial prejudices, antagonisms and fears of the employees, the record is likewise bare of substantial evidence tracing responsibility for its distribution to the respondent. Consequently, and in view of the respondent's disclaimer of responsibility, it is found that the respondent did not cause the distribution of the pamphlet or the speech.

Left for consideration, then, are the Ferbert letters, dated May 2 and June 1, 1944, respectively. In these letters, Ferbert directed the employees' attention to the forthcoming election; pointed to the importance of the election, "determining as it will whether you wish to place your employment conditions in the hands of the Union"; asked the employees carefully to consider and discuss among themselves the program and leadership of the Union and to contrast the past record of the Union with that of the respondent; and, while expressing the respondent's recognition of the employees' right to join a union of their choice, nevertheless emphasized that the law did not require any employee to join or pay dues to any labor organization as a condition of employment. The June 1, 1944 letter stated:

> The Company continues in its long policy of not requiring membership or non-membership in any labor organization as a condition of employment. The Company will continue to afford the right to work to qualified seamen whether or not they join or do not join a labor union.

Aside from these observations, Ferbert's letters were devoted mainly to a discussion of the subject of wages and of the Union's program for a "rotary hiring" system.[3] In

[3] This system contemplates that vacant positions on board a ship be filled from a union hall hiring list. Names of unemployed seamen are placed on this list in the order of their registration. Vacancies are filled by the qualified seamen whose names appear at the head of the list.

the letters Ferbert stated that it was the respondent's policy to pay wages as high as any competitor, "regardless of whether they have a Union contract," and he particularly stressed that wage rates were "controlled by the Government." The May 2 letter elaborated on this latter point as follows:

> We do not know what the program of the National Maritime Union will be if it is elected to represent you—or what it is promising you as a reason for your votes. We do know that this Company pays the same wages that are paid on all Great Lakes bulk freighters, regardless of whether they have a Union contract. We further know that neither the Union nor the Company has today control over what wages shall be paid. As you know, during this Emergency, the question of wage rates is in the hands of the Government—in that they have been frozen by the Government and their regulation must be in accordance with essential Governmental Stabilization policies. Any and all wage changes must be approved by the War Labor Board.

On the subject of "rotary hiring," Ferbert, in his second letter wrote:

> You should carefully consider some of the issues which have been referred to by the Union • • • one is "rotary hiring." To make sure that you understand what this means • • • it means that you are entitled to return to the same ship in the spring that you laid up the previous fall, but if you are following an engineer or mate, and want to work with him, and he is promoted, he cannot hire you. This is called "fleet seniority." Again, if you ship out as a deck watch, *you cannot be promoted to a watchman or lookout when there is a vacancy.*[4] The vacancy must be filled by the man at the top of the list at the Union Hall. If you do not go back to the same ship in the spring, you register at the Union Hall and work your way to the top of the list, and take the first opening for the position you are seeking, whether it be in our fleet or

[4] Emphasis supplied.

some other fleet. If you refuse the position, then you go to the bottom of the list.

The suggestion that the employees' selection of the Union would result in a forfeiture by the employees of their opportunities for promotion represented a misstatement of the Union's position in that respect. As shown by the uncontradicted and credited testimony of Jack Lawrenson, the Union's vice-president, it is the policy of the Union to allow promotions of qualified seamen under the circumstances indicated in the letter, and it is only an unfilled vacancy arising after any such promotion has been made that must be filled from the rotary hiring list. Ferbert's statements concerning the wage stabilization laws, while not literally inaccurate, nevertheless contained implications which were misleading. Their formulation was such as to convey the impression that collective bargaining would be fruitless since all wage increases had been banned by the governmental wage stabilization policy. Actually, of course, the fact that wages generally were frozen during the war period did not preclude wage adjustments under certain circumstances.[3] Moreover, the letters gave an erroneous impression that collective bargaining was limited to the question of wages, ignoring other conditions of employment in which collective bargaining can be a factor, such as working rules and the adjustment of grievances.

The respondent offered no explanation as to the purposes of its letters, other than that it desired to state its position with reference to the forthcoming election. It is clear, however, particularly when considered in context with the respondent's other statements and conduct to be discussed below, and it is found, that the letters were intended and designed, not to enlighten the employees on the Federal wage stabilization policy and the issues of the

[3] Indeed, the record in the instant case discloses that as a result of demands made by the Union and another labor organization of four other members of the Lake Carriers Association of which the respondent was also a member, there was pending, at the time Ferbert's letter was written, a proceeding before the War Labor Board looking toward a wage adjustment for employees of the companies there involved. An upward wage adjustment was granted by the War Labor Board in June 1944, and the respondent thereafter applied to the War Labor Board for permission to put the new rates into effect.

campaign, but, instead, to discredit the Union and its objectives by leading the employees to believe that their selection of the Union could yield them no advantage, but, on the contrary, would prove costly to them, not only in the form of dues, but through the loss of a valuable term and condition of employment as well. The respondent's defense that the letters were nonetheless privileged under the First Amendment will be considered below in the section of this report entitled "Conclusions."

3. Anti-union statements and activities of licensed officers aboard the respondent's vessels

Evidence was adduced at the hearing concerning statements and activities of an anti-union character made during the 1944 sailing season by licensed officers on the respondent's vessels noted below.[6]

(a) On board the steamer *William J. Filbert*

Several weeks after the start of the sailing season Captain Clarence Brinker, the master of the vessel, discovered, as he testified, that William Lee was the Union's ship organizer.[7] Lee testified that one evening, not long thereafter, Brinker entered his quarters, violently pulled the curtain from his bed, and in the presence of another unlicensed employee, accused him in vile and abusive language of driving men off the ship because of the Union. When Lee later went out on deck to request an explanation, Brinker, in the presence of the crew, not only repeated the same accusation, but went on, in an abusive manner, to disparage Lee in particular and the Union in general. Brinker's version of this incident was as follows:

> I went back in the firemen's room, pulled the curtains aside, Lee was in bed, I asked him what he meant

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[6] No attempt will be made to describe all statements and activities claimed by counsel for the Board to constitute part of the respondent's course of anti-union conduct. Thus, no mention is made of those incidents which the undersigned regards as insubstantial in character or as unsupported by a fair preponderance of credible evidence.

[7] The "ship organizer" was the crew member designated by the Union to act as its volunteer organizer during the sailing season.

by bothering these men. He wanted to know what men. I said, "These two firemen, that you bothered them to join the N.M.U. and they told you they didn't want to join." I told him, "You got the privilege of asking any man on the ship to join the N.M.U., that is your privilege, but when they tell you no, and you keep on asking them, I think it is my privilege to step in there."

• • • • •

He followed me up on deck and started the conversation all over again, said he wanted to get it straightened up, that he didn't want to be accused of driving men off the ship. I told him I just got these two firemen's word for it, that is what I got to go by.

Brinker testified that his conduct on this occasion was prompted by the fact that two firemen, Pozy Moore and Hugh McGuiness, had quit the vessel that day because "Lee was bothering them for joining the N.M.U. all the time," and because they wanted "to be on a ship where they wouldn't be bothered like that." Lee, on the other hand, denied that he had been in any way responsible for the firemen quitting, and testified that they had quit after returning from shore leave in a drunken condition. Other evidence in the record supports Lee's testimony in this respect;[8] and, in any event, it is clear from Brinker's own testimony that Brinker had no personal knowledge of the true facts and had made no prior attempt to confirm the statements allegedly made to him by the firemen when he seized the occasion publicly to denounce Lee for engaging in union activities aboard his vessel. While Brinker denied that he had, as Lee testified, used vile and abusive language in addressing Lee, elsewhere in his testimony he

[8] McGuiness, a member of a rival labor organization, called by the respondent to corroborate Brinker, admitted that he and Moore had had some drinks while on shore leave, although he denied that they had become drunk. During the course of his testimony, which was generally indefinite, contradictory and unreliable, McGuiness further admitted that Lee had not in fact bothered him to join the Union, that Moore had quit to take a war job because he was generally disgusted with the boat, and that he (McGuiness) had quit because his friend and partner, Moore, was leaving the boat, and not because of anything Lee had said to him.

admitted that it was not unusual for him to use profanity and that he "might have swore, that is, like any man would." To the extent that Brinker's testimony with respect to the incidents related above conflicts with that of Lee, the latter's testimony, herein found to be credible, is accepted. It is found that Brinker by his conduct described above subjected Lee to unwarranted abuse because of his union activities and improperly attempted to restrict, thereby interfering with, Lee's efforts to organize employees aboard the Filbert.

It was Lee's further testimony that between the latter part of April and about June 1, 1944, Brinker made it his practice several times a week to initiate conversations with Lee in the presence of the crew on the subject of the Union. In these conversations, Brinker, using at times language more foul than profane, sharply attacked the Union, its policies and its leadership. Brinker, among other things, stated that the Union and those in it were no good and that its principles were "rotten." He accused the Union of lying. He condemned the rotary shipping list policy of the Union. Characterizing the Union as a "bunch of nigger loving bastards," he played on the theme that the Union was opposed to racial discrimination in employment, and asserted that if the Union won the election it would "load the ships with niggers." On one occasion Brinker threatened Lee in the presence of others with the statement, "If this thing does organize and before the contract is signed, I am going to hire a big nigger to be your partner and the blacker the better." On another occasion, Brinker violently accused Lee of lying to a young porter, named Conn, about the rotary shipping list, and when Conn, at Lee's request and in his presence, thereafter repeated to Brinker exactly what Lee had told him about the list, Brinker shook his fist at Conn, berated him in foul terms and stated that Conn had given him a different version previously. Conn quit the ship the following trip.[9]

Brinker, while admitting that he had a number of conversations with Lee on the subject of the Union, testified

[9] Brinker, who denied the Conn incident, testified that he did not know and did not inquire why Conn had left the ship, coupling this testimony with a statement that the ship was not shorthanded much during the 1944 season. His testimony in this respect was at variance with other testimony given by him.

that in each instance the conversations were initiated by Lee and were held in private outside the hearing of the crew. He denied generally making the statements or using the language of the character which Lee attributed to him. But in the course of his testimony he admitted that he spoke to Lee about "rotary shipping and things like that"; that he discussed with Lee the pamphlet, "N.M.U. Fights Jim Crow," and that he stated that if the boats were unionized Lee might have to eat and sleep with colored people, and that he otherwise talked to Lee about matters he read in the *Pilot*, the Union's publication. In view of Lee's subordinate position, Brinker's testimony that Lee initiated the discussions impresses the undersigned as highly improbable. Brinker's testimony that his conversations with Lee were held in private conflicts with testimony of Third Mate King, a witness for the respondent, that during the 1944 sailing season he would hear the men comment that Lee and Brinker were talking about the Union. Lee by his demeanor and candor impressed the undersigned, as Brinker did not, as a completely credible witness; and Lee's testimony described above is credited and accepted as fact notwithstanding Brinker's partial denial.[10]

One further aspect of Lee's testimony warrants mention, and that concerns an abortive attempt made to discharge him in 1944. Lee testified that in the early part of May, John Zyp, assistant to the fleet captain, who was detailed to the personnel office, came aboard the *Filbert* while it lay in a port near Cleveland. Later that day, Chief Engineer Curry informed Lee that Zyp had wanted to know why Brinker was carrying Lee and had suggested that Lee be discharged. Lee's discharge was prevented, however, as Curry informed Lee, by Curry's resistance to the pro-

[10] The undersigned has taken into account Lee's testimony that he would utilize the discussions initiated by Brinker for organizational purposes by explaining to Brinker, so that the crew members who were present might hear, the Union's policies and program. Contrary to the assertion in the respondent's brief, it is found that Lee's attempts to turn the discussion to his advantage does not detract from the fact that Brinker's action had the purpose, intent and effect of disparaging the Union and disclosing to the employees his opposition and that of the respondent thereto. The mere fact that Lee may not have been adversely influenced does not mean that the others present likewise were not.

posed discharge action and Curry's statement to the Captain that if Lee was discharged he (Curry) would go too. Brinker did not deny the occurrence of this incident, and Zyp and Curry, both of whom were available as witnesses, were not called to rebut Lee's testimony, which is credited. In view of the respondent's failure to explain Zyp's reason for seeking Lee's discharge and the fact that Lee was admittedly a competent employee, it is reasonable to infer, and it is found, that the respondent attempted to have Lee discharged because of his union activities.

(b) On board the steamer *Horace Johnson*

In 1944 John Sims, employed as an oiler, was the Union's volunteer organizer on board the *Horace Johnson*; Clarence Wallace was master of the vessel. Sims testified that in late May of that year he had a discussion with Wallace, initiated by the latter, concerning the Union, in the course of which Wallace warned Sims:

> You CIO people, you are going to cause these men to lose their bonus. These men get a bonus at the end of the season. You're going to come up here and try to start overtime, and Pittsburgh isn't going to give them the bonus, and they are going to lose all these things.

Wallace [Sims testified] said further,

> We had a union up here some years ago, 1909 or 1910 or 1912, or some time. And it was a failure. And I don't want any part of it on my ship.

Later in the conversation [Sims' testimony continued], Wallace, referring to George W. Anderson, a wheelsman on the vessel then on shore leave, said, "Now this old Anderson on here, he is a great Union man. If he comes back drunk, if I catch him with a drink on him, well, the first chance I get I am going to fire him." When Sims mentioned that George Anderson was a good wheelsman, Wallace replied, "Yes, he can wheel a steamboat, sure he can, but the first chance I get I am going to fire him." By this latter remark, it is found, Captain Wallace not only threatened to seize any opportunity that might present itself to discharge George Anderson because of his union activities,

but also intimated that Sims could expect to incur the same consequences if he continued his active interest in the Union.

It was Sims' further testimony that on one occasion not long before the election, First Assistant Engineer Kermit Anderson (not to be confused with George Anderson), in the presence of two other employees, referring to the Union, told him, "Any man who will pay $2.50 a month dues is a God damned fool." On another occasion, Kermit Anderson remarked, "The CIO isn't going to last always, President Roosevelt isn't going to live always, and when he dies all the Jews, the God damned Jews are going to be out and we will have a different set-up." On still another occasion, Kermit Anderson said, "You and the CIO if you do win the election, you are going to bring up a lot of goddam niggers from the coast, and they are going to put one in every room." Kermit Anderson asked, "How would you like to eat and sleep with a nigger?" George Anderson, the wheelsman referred to above, testified that prior to the election he also had a number of conversations in the galley with Kermit Anderson in the presence of other crew members, in which the latter stated that he thought it foolish for anyone to pay $2.50 monthly union dues. Kermit Anderson on one occasion, added "If you win the election in this company you will have to dig down to the tune of $2.50 a month to feed Joe Curran [the Union's president]. He must be getting pretty hungry now, and to keep a lot of gas hounds and drunks hanging around the corners."

George Anderson, who, as wheelsman, came in frequent contact with Captain Wallace, testified that Wallace on a number of occasions interrogated him concerning the union membership of himself and others. About April 15, 1944, Wallace asked Anderson if he belonged to the Union, and, upon Anderson's admission that he did, Wallace went on to express his opposition to the Union. In the middle of May 1944, Wallace asked George Anderson whether there were any union members on the forward part of the ship, adding that he knew they were all union men in the aft part (the engineers' section) of the ship. In the latter part of May, Wallace asked George Anderson whether he "was an organizer or just a good Union man." On June 5, after the vessel had left the port of Two Harbors where George

Anderson had visited the Union hall, Wallace asked Anderson whether two other crew members who had also been at the hall were members of the Union. And when Anderson suggested that the Captain ask the men themselves, Wallace said, "They were up to the Union hall yesterday, weren't they? * * * they must belong to the Union." The last quoted remark, it is found, was intended to and had the effect of conveying the impression that the respondent was engaged in surveillance of the Union hall. Wallace, also, according to George Anderson, raised the racial discrimination question, asking him on one occasion whether he "would sleep in a room with a nigger."

The accounts given by Sims and George Anderson concerning their conversations with Captain Brinker and First Assistant Engineer Kermit Anderson, as described above, stand undenied in the record.[11] Both Sims and George Anderson impressed the undersigned as forthright witnesses, and their testimony is credited, accepted, and found herein as fact.

(c) On board the steamer *McGonagle*

Harry Jones, a wiper, joined the Union shortly after the start of the 1944 season, but his membership, so far as the record discloses, was unknown to the respondent. Jones testified credibly and without contradiction, that one day in early April as he was leaving the vessel for shore leave, Captain Penzenhagen, the master of the *McGonagle,* accosted Jones and inquired whether he was bound for the Union hall, thereby, it is found, interrogating Jones concerning his union membership. Jones further testified, without denial, and it is found, that in the latter part of April, Second Assistant Engineer Benson, remarking that he did not like to have a "bunch of niggers" sleeping around him, asked Jones what he thought he would gain if

[11] Neither Wallace nor Kermit Anderson were called as witnesses. The latter was not shown to be unavailable. A physician's letter was submitted in the last day of the hearing stating that Wallace was ill in Chicago and physically unable to make a trip to Cleveland. Although the respondent first indicated an intention of doing so, it later stated that it had decided not to make an application for an adjournment or for a deposition to take Wallace's testimony.

the Union came in and how long he (Jones) could then expect to remain on the ship.[12]

(d) On board the steamer *Robert W. Bunson*

Robert Vogt, a seaman, who joined the crew of this vessel on October 18, 1944, testified that about 10 days later, while he was on lookout in the pilot house, Captain Donald Lawless in the presence of the wheelsman and the second mate engaged him in a conversation which led to the subject of the Union. Lawless, testified Vogt, questioned him on whether he belonged to the Union, and upon receiving an affirmative reply, said, "I don't think much of the NMU or the CIO." Vogt asked why, and Lawless replied, "Well, they are a bunch of communists and Jews." About 2 nights later, in a further conversation with Vogt, Lawless expressed somewhat similar sentiments about the Union, and added, "If these lake boats are organized they will have a bunch of niggers down here and you will have to work with them." Lawless, although he admitted having a conversation with Vogt in the pilot house, concerning the Union, denied making the remarks attributed to him by Vogt. But at various other points in the course of his direct and cross examination, he testified that during that conversation he stated to Vogt that he "thought the Union was making a mistake by showing all the pictures of the negroes working and living with the white crews," that he expressed the "thought that the men on the lakes weren't ready for that sort of thing," and that Vogt informed him that he belonged to the Union.[13] Upon the record as a whole

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[12] William Herrick, the Union's ship organizer on the *McGonagle*, testified that Captain Penzenhagen on one occasion attended a meeting of crew members, stated to the employees present that if the Union won the election the men would lose certain privileges, and made other anti-union remarks. Herrick's testimony, however, is established by the record to be of a hearsay character, and, although undenied, is not relied on in the findings made herein.

[13] On direct examination, Lawless testified that he did not interrogate Vogt concerning his union membership at the time Vogt boarded the ship but was not asked whether he interrogated him in the pilot house. It is clear from Vogt's testimony, both on direct and cross examination that Vogt claimed only that the interrogation took place in the pilot house.

and from his observation of the witnesses, the undersigned is persuaded that Vogt's version is the more reasonable one, and to the extent that it is at variance with that of Lawless, Vogt's testimony is credited. It is found that Lawless interrogated Vogt concerning his union membership and made the other statements attributed to him.

Other licensed officers on the *Bunson* also openly expressed their opposition to the Union. Third Mate Carr and Third Assistant Engineer, Scharmin, testified Vogt, made it their practice frequently to engage in anti-Union discussions in the presence of the crew, in which among other things, they made reference to its officials as agitators and Communists. Scharmin, although not shown to be unavailable, was not called as a witness. Carr, who was called, admitted having a number of discussions with Scharmin in the presence of the crew members on the subject of the Union, not only during the period covered by Vogt's testimony, but also during the pre-election period. Carr testified, however, that these discussions were limited to the question of the Union's rotary hiring list which both he and Scharmin opposed and condemned. It appears, however, from Carr's over-all testimony that other matters concerning the Union were also discussed. Moreover, it is most unlikely that in a series of discussions extending from April to December, Carr and Scharmin would have restricted themselves to the single subject of the rotary hiring list, and particularly so when it is considered, as Carr's testimony discloses, that Carr and Scharmin were roommates who also discussed the subject in their room and who always saw eye to eye on all questions relating to the Union. Carr was unable satisfactorily to explain why, in view of their mutual and general agreement, it was necessary for him and Scharmin repeatedly and publicly to argue the matter before the crew. Under all the circumstances the undersigned does not credit Carr's partial denial of Vogt's testimony; nor does he credit Carr's testimony that the subject of discussion was limited to the rotary hiring list. It is found that Carr and Scharmin during the entire 1944 sailing season staged open discussions before the crew for the purpose and with the intent of disparaging the Union and impressing upon the crew members their opposition and hostility to it.

(e) On board the steamer *Peter A. B. Widener*

Not long after Joseph Babin, a deckwatchman and the ship's organizer, began his organizational work among the crew members in early April, he was summoned to an interview in the room of Captain Gabriel A. Lehne, master of the vessel. Lehne, according to Babin, opened the interview with the statement, "I understand you are an organizer aboard this ship." Following Babin's affirmation of this fact, Lehne said, "The Company does not hire any Union men aboard any of their ships." Lehne then went on to accuse Babin of talking unionism to the employees and interfering with their work. On two subsequent occasions within the next 2 or 3 weeks, Babin's testimony continued, Lehne again summoned Babin to his room and reprimanded him for interfering with the men by talking unionism to them "at all times day and night."

Lehne admitted that in early April he had a talk with Babin about his organizing activities, but denied that he ever told Babin that the respondent did not want union men aboard the ship, and denied further that he had ever cautioned Babin not to talk unionism aboard the ship. Elsewhere in his testimony, however, Lehne conceded that he directed Babin not to "chase" men off the ship by his organizing activities and "not [to] bother them so they can't rest or sleep." Lehne asserted that he had been impelled to address Babin on this subject because men were quitting the vessel as a result of Babin's union activities, and were advising him that, although they did not care to join the Union, Babin would not leave them alone and would not let them rest. Babin unequivocally denied that he had ever spoken of the Union to men while at work or otherwise interfered with them. The respondent adduced no evidence to refute Babin's denial. Nor did the respondent adduce any specific evidence to support Lehne's conclusionary statement that Babin disturbed employees in their rest; Lehne himself, when pressed for details, was unable to supply the names of any seaman who had actually quit the vessel because of Babin, or who had told him that he had, and he admitted that quittings were frequent during that period for a variety of other reasons. Lehne's testimony generally was indefinite, evasive, and lacking in conviction. Babin's testimony, on the other hand, supported

by convincing detail and unshaken by cross examination, impressed the undersigned as that of a truthful witness. The undersigned credits and accepts as fact Babin's testimony, above outlined, rejecting Lehne's partial denial as well as his testimony as to the reasons which prompted him to reprimand Babin for talking unionism to the employees.

An effort to curb Babin's union activities was also made by Chief Engineer Frederic Hungar. As deck watchman, it was Babin's duty to sound the ballast tanks and to mark the soundings on a board located inside the engine room door in or near the fantail.[14] Until the incident about to be related, it had been the usual practice on the *Widener* for the deck watchman to come into the engine room to convey to the engineer in charge the mate's instructions about turning water on or shutting it off. Babin testified that one day in early May, while he was in the engine room performing his usual tasks in connection with the soundings, he was ordered out by Hungar and told not to come in there again. Hungar said to Babin:

> You keep your ass out of this engine room. And another thing, I want you to keep away from my men. You are going in to their rooms. You are bothering them. You are keeping them from their rest. The men that are sleeping, you wake up, and start talking Union to them.

When Babin pointed out that he never entered anyone's room unless he was invited in, Hungar, according to Babin, replied "Well, that is what I am telling you now. I want you to keep away from those men."

Hungar's version differs from Babin's principally as to the circumstances leading up to the conversation, but, generally speaking, tends to confirm Babin's testimony as to its substance. Hungar admitted that he ordered Babin out of the engine room and that he also cautioned him at the same time to stay out of the men's living quarters so that they might rest when off watch. Although Hungar denied that he knew then that Babin was a union organizer, his testimony in that respect, as in many others, was confused, contradictory and unreliable, and it is apparent from

[14] The fantail is the room in the after end of the ship where the steering gear is located. It is directly adjacent to the engine room.

his over-all testimony as well as from that of Lehne that he did in fact have such knowledge.[15] It was Hungar's claim that he ordered Babin from the engine room on the occasion in question because he had observed Babin, with literature in his pocket, talking to men in the engine room.[16] Hungar admitted that he did not know the subject of Babin's conversation. Up to that time, it had been customary for deck watchmen to converse with the engine crew while engaged in the engine room in their soundings tasks. The respondent had no rule prohibiting employees from talking while on watch, and there is no evidence that Babin was in fact interfering with the efficiency of the men at work.

It is reasonable to infer from all the credited testimony set out above, and it is found, that Lehne cautioned Babin about talking unionism on the ship and that Hungar ordered Babin to stay out of the engine room and out of the crew's quarters for the purpose and with the intent of restricting Babin from discussing the Union with members of the crew.

The record further establishes, and it is found, that on a number of occasions during the pre-election period, Babin, in the presence of the deck hands over whom he had charge, was subjected, because of his union activities, to unnecessary and unwarranted abuse and criticism of his work at the hands of the First Mate who would couple his criticisms with remarks such as, "All you God damn Union men don't know how to do anything" and "If that is the way you God damned Union men are going to do this work, you might as well pile off."[17]

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[15] Thus, for example, Hungar's disclaimer of knowledge is inconsistent with his testimony that he ordered Babin to stay away from the men's living quarters because Babin was disturbing the employees in their rest, particularly when considered in conjunction with Lehne's testimony on the same point.

[16] Asked, what the literature was, Hungar testified as follows:

> I didn't see it. I just seen it in his pocket, sticking out of his pocket, and I thought it was something pertaining to the * * * I just told him to get out and stay away.
>
> Q. Pertaining to the what?
>
> A. Well, I didn't know what it was, paper, literature, and I figured it was some kind of data.

[17] This finding is supported by Babin's uncontradicted testimony.

(f) On board the steamer *Samuel F. B. Morse*

Ralph Zmrazek, a young deckhand, testified that on a number of occasions in April and May of 1944 he was called to the quarters of Captain Clarence Gerlach to help Gerlach shampoo his hair. There, Zmrazek testified, Gerlach would frequently bring up the subject of the Union. Among other things, Gerlach told Zmrazek not to join or vote for the Union; that the Union was no good; that it was composed of drunks and communists; that if the Union became the bargaining representative it would take 3 or 4 years before the respondent signed a contract with it; that because of the union's rotary hiring policy, the advent of the Union would cause Zmrazek to lose his seniority and might prevent him from sailing with Gerlach or some other captain of his choice on another ship the following season; and that he should keep away from the Union's ship organizer, Arno Weissflog, whom Gerlach described as being "a little cuckoo." Gerlach on one such occasion, further testified Zmrazek, asked him whether he knew who the union organizers were on board the vessel. Gerlach admitted that, on the occasions referred to, he had conversations with Zmrazek in which he told Zmrazek that he did not approve the Union and that if the Union won the election Zmrazek would be unable to follow him to another vessel; but he testified that the conversations were initiated by Zmrazek and that he informed Zmrazek on the occasion of each such conversation that it was Zmrazek's privilege to join the Union if he desired; and he otherwise denied Zmrazek's testimony as outlined above. Zmrazek, from his over-all testimony and his demeanor on the witness stand, impressed the undersigned, as Gerlach did not, as a truthful witness.[18] The

[18] Gerlach was an evasive witness whose over-all testimony, in many respects contradictory and improbable, indicated a paramount desire to conform to what he conceived to be the respondent's theory of the case. Thus, although he admittedly spoke to Zmrazek about the rotary hiring list, he testified that he was altogether unfamiliar with the history of the Union or its program. Thus, too, his testimony at other points that he never saw the Ferbert letters, that he never was informed by the respondent that an election was to be held in 1944, and that he received no instructions from the respondent concerning it, is not only improbable on its face but is at variance with other undisputed testimony and documentary evidence in the record.

undersigned credits Zmrazek's testimony, above outlined, rejects the testimony of Gerlach inconsistent therewith, and finds that Gerlach made the statements substantially as attributed to him by Zmrazek.

There is evidence, credited by the undersigned and found as a fact, that during the pre-election period other officers on this ship also expressed their opposition to the Union and its policies. Thus, Weissflog's testimony was substantially undenied that Chief Engineer Haller in the mess room and before members of the crew frequently engaged Weissflog in conversations in which Haller accused the Union of lying to its membership about rotary shipping.[19] Also substantially admitted was Weissflog's testimony that on one occasion in the presence of Weissflog and a wheelsman, First Mate Ace Zyp brought up the subject of the pamphlet, "NMU Fights Jim Crow," commented in connection therewith that he would dislike sailing with Negroes, and in the same conversation accused Weissflog of "agitating against the crew."

Captain Gerlach learned that Weissflog was the ship's organizer about a week or two after the vessel started to sail in the 1944 season. Shortly thereafter, as appears from Gerlach's own testimony, he met Weissflog on deck and told him, "I know what you are here for. I will warn you and also give an opportunity that while you are on watch and any of the other men are on watch, don't talk to them. When you are off watch and the other men are off watch, you can do as you please."[20] The record establishes that on a number of occasions thereafter, Gerlach, openly and in the presence of the crew, displayed his antagonism to Weissflog and subjected him to abusive and discriminatory treatment because of his union activities. Thus, on one occasion, after a group of about 10 crew members, including Weissflog, who had been to the Union hall returned to the vessel allegedly late, Gerlach selected Weissflog alone for reprimand, explained in the presence of other crew members that he was interested in Weissflog and not in the

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[19] Haller's testimony on this point was, "I never said they were lying, I just commented about it."

[20] The respondent's vessels had no rule prohibiting seamen from talking while on watch and it was a common practice for the men to talk on a variety of subjects while working.

others because Weissflog was the organizer, and added that he would be glad to get rid of Weissflog who, he said, was "nothing but a communist [who was] corrupting the morals of the young seamen on the lakes."[21] On another occasion, Gerlach physically ejected Weissflog from the mess room where Weissflog, during his lunch period was engaged in discussing the Union with members of the crew, and at the same time told Weissflog that he did not want again to find Weissflog in the mess room talking to the crew members.[22] Gerlach took this action notwithstanding the fact, established by the record, that the mess rooms on the respondent's vessels are used not only for eating but as recreation rooms where members of the crew are free to converse. On a third occasion, shortly after the election, Gerlach, passing the firemen's living quarters, observed Weissflog talking to some of the firemen, whereupon he entered the room, ordered Weissflog out, and, when Weissflog failed to leave, physically ejected him therefrom, stating at the same time that Weissflog had no reason to speak to the members of the engine department, that he was going to stop him from speaking to anyone, and that he "ought to go back to salt water where he belonged."[23] Weissflog, according to his credited testimony, was off watch and on his free time at the time of this incident. It is found that

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[21] This finding is based upon the testimony of Weissflog which the undersigned credits. Gerlach did not deny the occurrence of this incident. Although testifying vaguely that he also reprimanded others, Gerlach was unable to recall their names. His testimony in this respect as well as his denial that he called Weissflog a communist and accused him of corrupting the seamen's morals is not credited. As found above, Gerlach was an unreliable witness. On the other hand, the undersigned was favorably impressed by Weissflog's attitude and demeanor on the witness stand and by his over-all testimony which in the main was supported by other corroborating circumstances in the record.

[22] This finding also is based upon the credited testimony of Weissflog. Although Gerlach at first testified that he was prompted to take this action by a report from a waitress that Weissflog was disturbing the steward's crew and that nothing was said about the Union, he later, inconsistently, admitted that what the waitress actually complained of was that Weissflog was talking about the Union.

[23] Weissflog's testimony as to this incident was not substantially denied, and was, in effect, corroborated by Zyp.

Gerlach by ejecting Weissflog from the mess room and from the firemen's quarters, while Weissflog was on his free time and was not interfering with the work on the ship, and by his accompanying statements, intended to and did prevent Weissflog from engaging in legitimate union activities.

(g) On board the steamer *Irving S. Olds*

In 1944 the ship's officers on this vessel, as on others, sought to prejudice the employees against the Union by appeals to racial intolerance. Howard Shartle, a watchman, testified that on one occasion in mid-April, Captain Murray, master of the vessel, after inquiring of him, in the presence of another member of the unlicensed personnel, whether there were many Negroes shipping on salt water, remarked, "You know if the Union gets here on the Lakes you are going to be eating and sleeping here with the niggers." John Vogel, another watchman, testified that in the latter part of April the vessel's chief engineer (not identified by name in the record), while discussing the Union in the presence of the witness and the deckhands, stated that he did not like the Union because Negroes worked with white men on vessels organized by it. Vogel further testified that in late May 1944, Captain Murray, during the course of a discussion concerning the Union, made the comment that he would hate to give out orders to colored wheelsmen and watchmen. The foregoing testimony of Shartle and Vogel is credited, and it is found that Murray and the chief engineer made the statements attributed to them by these witnesses.[24]

Shartle, the Union's ship organizer on this vessel, was discharged on April 24, 1944 because of his union activities, as hereinafter found.

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[24] Vogel's testimony concerning the statement made by the chief engineer was not denied. Although Murray denied making the statements attributed to him, his denial is not credited. Murray by his over-all testimony which was generally evasive and at times improbable and inconsistent with other facts clearly established by the record, disclosed himself to be an unreliable witness. On the other hand, both Shartle and Vogel by their demeanor on the witness stand and by their over-all testimony, unshaken by cross examination and supported by other corroborating circumstances in the record, impressed the undersigned as truthful witnesses.

Vogel, who succeeded Shartle as organizer, was subsequently likewise discharged because of his union activities, but the discharge in his case was later rescinded. This finding is based upon the following testimony of Vogel, credited by the undersigned: One day in mid-June 1944, shortly after the election, while the *Olds* was in port, Joe Riley, a deckhand who had been drinking heavily, came aboard the ship and engaged Vogel in a verbal altercation, demanding an accounting for his union dues. Observing the argument, First Mate Dobson intervened, and, addressing himself to Vogel, said, "So you are the Union organizer. That is where all this trouble is coming from. You can pack up your clothes and get off." Since the boat was to sail within the hour and there was insufficient time for Vogel to pack his clothes, it was agreed that Vogel leave at the conclusion of the next trip. At the end of that trip as Vogel was about to leave, Dobson asked him to remain, but Vogel whose clothes were already packed, considering his future status on the boat to be insecure, left the vessel anyway. Although Dobson denied that he commented on Vogel's union position on the occasion in question or that he ordered him to leave the vessel, his denial lacked conviction and is not credited.[25]

4. Conclusions as to interference, restraint, and coercion

From the foregoing it is clear, especially when considered in context with the discriminatory discharge of Howard Shartle discussed below, but also independently thereof, that during the 1944 sailing season, the respondent,

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[25] On cross examination, Dobson testified that he had first learned Vogel was an organizer when he heard him conversing with Riley about union dues, that he had intervened in the altercation, that Vogel might have said to him that he could not pack his clothes in time, and that he might have told Vogel to get off the following trip if he wanted. He further testified as follows:

Q. What if anything did you say to Vogel after you had settled the argument [with Riley] or at least quieted them down?
A. I was awfully surprised to find that Vogel was the person who was causing so much trouble.
Q. What did you say to him?
A. I don't remember.

through its agents, engaged in a course of conduct violative of the Act. Although the respondent's anti-union conduct took a variety of forms, all were integrated, it is found, by a common purpose and plan—to defeat the Union in the election, and, beyond that, to discourage and frustrate the organizational efforts of the Union.

In part, the respondent's offensive against the Union took the form of statements and activities which, on their face, were coercive, intimidatory, and discriminatory in character. Thus, in some instances, the respondent's agents made statements to crew members carrying either outright threats of economic reprisal or connotations of the same import. Examples of such statements are found in Captain Wallace's statements to Sims on the *Horace Johnson* that the CIO would cause the men to lose their bonus and that he did not want any part of the Union on his ship; in Wallace's threat to discharge Anderson; in Wallace's statement to Anderson that "the CIO isn't going to last always—and we will have a different set-up"; in the statement of Captain Lehne of the *Widener* to Babin that "the Company does not hire Union men aboard any of their ships"; in the statement of Captain Gerlach of the *Morse* to Zmrazek implying that the latter would lose his seniority if the Union became the bargaining representative; and in Gerlach's statements to Weissflog in the presence of the crew expressing a desire to get rid of him because of his union activities. Equally, if not more, coercive in character was the unexecuted discharge of Vogel by First Mate Dobson on the *Olds*. Intimidation in the form of discriminatory and abusive treatment of employees acting as volunteer union organizers is found in Captain Brinker's public vilification and denunciation of Lee on the *Filbert* because of his union activities, and in his unsupported accusation that Lee was driving men off the ship; in the action of Chief Engineer Hungar of the *Widener* in ordering Babin out of the engine room; in Lee's subjection to unnecessary and unwarranted criticism at the hands of the first mate because of his union activities; and in Weissflog's physical ejection from the mess room and from the firemen's quarters by Captain Gerlach of the *Morse*. While there is no direct evidence that the respondent actually engaged in surveillance of the union activities of its crew members, Captain Wallace's re-

marks to Anderson indicating knowledge of those present at the Union hall served to foster the impression that it did engage in such conduct, and the fostering of this impression was as intimidatory in character as surveillance itself. Also clearly violative of the Act was the interrogation of crew members by licensed officers concerning union membership and activities, which the record shows was widespread.[26]

Further, it is found, the respondent, through its agents, directly interfered with the Union's organizational efforts by imposing or attempting to impose restraints upon solicitation activities of certain of the Union's employee organizers. Thus, Lee on the *Filbert* was admonished by Captain Brinker not to continue asking employees to join the Union when they had once told him "no"; Babin on the *Widener* was warned by Captain Lehne not to talk unionism to the men "day and night," and was directed by Chief Engineer Hungar to keep away from the engine crew not only while the men were at work but also from their quarters when they were off watch; and Weissflog on the *Morse* was cautioned by Captain Gerlach, shortly after Gerlach discovered that Weissflog was the organizer, not to talk while on watch, and on subsequent occasions and during non-working time was physically ejected by Gerlach from the mess room and from the firemen's quarters when Gerlach discovered him talking about the Union. The respondent argues that the conduct of its supervisors was justified as an exercise of an employer's right to set up reasonable regulations relating to organizing activity on his premises. True, the Act does not prevent an employer from making reasonable rules covering the conduct of employees on company time, and the promulgation and enforcement of a rule prohibiting union solicitation during working hours is presumptively valid in the absence of evidence that it was adopted for a discriminatory purpose.[27] In the instant case, however, the respondent had no

[26] E.g., interrogation by Captain Wallace of George Anderson on a number of occasions on the *Horace Johnson*; of Jones by Captain Penzenhagen on the *McGonagle*; of Vogt by Captain Lawless on the *Bunson*; of Babin by Captain Lehne on the *Widener*; and of Zmrazek by Captain Gerlach on the *Morse*.

[27] *Matter of Peyton Packing Co.*, 49 N.L.R.B. 828, 843.

rule of general application prohibiting either solicitation or talking during working time; the record not only establishes that it was common for employees to converse while on watch, but that the respondent's own supervisors while on watch frequently made comments directed against the Union, thereby, in effect, engaging in anti-union solicitation. The record fails to establish that the organizers in question, who alone on their respective ships were singled out for restriction in the scope of their union activities, ever in fact engaged in conduct which impaired the discipline, safety, or efficiency of the ship, or that the restrictions imposed, at least insofar as they were applicable to non-working time, were either necessary or reasonably calculated to insure such discipline, safety, or efficiency. It is well settled that, absent such a showing of necessity or reasonableness, a prohibition of union solicitation on an employee's own time constitutes an unreasonable restraint upon the employee's right to self-organization.[28] In particular is this true aboard a ship which normally is the only place where seamen can be reached for organizational purposes.[29] In view of the circumstances attending the imposition upon Lee, Babin, and Weissflog of the restraints above mentioned, the discriminatory manner in which the restraints were imposed and applied, the extension of their scope to non-working time, and the respondent's entire coercive course of conduct herein discussed, it is found that these restraints were imposed and applied in order to impede employee self-organization; that their extension and application to time when both the organizers and the persons solicited were off watch constituted an unreasonable impediment to self-organization; and that their scope, purpose, and application were such as to constitute an illegal interference with the employees' self-organizational rights as guaranteed by the Act.[30]

The statements and activities above outlined were coupled with verbal attacks by supervisory employees

[28] *Matter of Republic Aviation Corporation*, 51 N.L.R.B. 1186, enf'd 65 S. Ct. 982 (16 L.R.R. 300).

[29] See *Le Tourneau Co. v. N.L.R.B.*, 54 N.L.R.B. 1253, enf'd 65 S. Ct. 982.

[30] See *Matter of Tomlison of High Point, Inc.*, 58 N.L.R.B 982; *Matter of Sledge Mfg. Co.*, 58 N.L.R.B. 1273.

against the Union. The Union, its policies and its leadership were disparaged: among other things, it was described as being "no good," its principles as "rotten," organizers were accused of lying to the crew members; the Union's rotary hiring policy was denounced; employees were told it would be foolish to pay dues, that the money would be used to support "gas hounds" and "drunks," that they could expect to gain nothing from the Union, and the Union's leadership was characterized as being composed of "Jews," "Communists" and "agitators." In making these verbal attacks, the supervisory employees seized particularly upon the Union's policy of equality between Negro and white seamen, deliberately injected this subject into their conversations with unlicensed personnel, and, formulating and treating the issue in a manner calculated to feed upon the employees latent prejudices and to arouse resentment and antagonism against the Union, at times distorted the Union's policy of equality into a threat that the employees' selection of the Union would result in their replacement by Negroes on the respondent's vessels. The undersigned does not agree with the respondent's contention that the Union cannot complain if the employees took exception to its admitted policy of opposition to racial discrimination. For it is clear from the manner in which this issue was treated that the respondent's supervisors were not really concerned with directing the employees' attention to the Union's attitude on this subject, but, rather, were intentionally utilizing it as an additional technique to combat the Union. Nor does the undersigned find any merit in the respondent's further contention that its supervisors' verbal attacks, generally, can be regarded only as isolated expressions of personal opinion, privileged as "free speech." Their coincidence in point of timing with a crucial period of union organization and their occurrence on every ship about which testimony was adduced disclose both a pattern and a design. Whether, standing alone, the verbal attacks assumed a character of coercion so as to remove them from the immunized area of free expression, it is not necessary here to decide. In assessing their full import they must be considered, as they are here, in context with accompanying events which provided the setting—the respondent's entire course of anti-union conduct, in-

cluding the threats, the acts of intimidation and discrimination, and the restraints imposed upon union organizers, all as outlined above. So viewed, it is found, the supervisors' statements, herein characterized as verbal attacks, constituted an integral part of the respondent's broad pattern of coercive conduct.

Likewise forming an integral part of the respondent's entire course of coercive conduct were the Ferbert letters. These letters, it is found, were a further device employed by the respondent in its offensive against the Union. By means of these letters, which in effect falsely posed the election issue as a contest between the Union and the respondent for the allegiance of the employees, the respondent further intruded upon the self-organizational rights of its employees, and made itself a participant in a contest to which it was not a party.[31] As found above, the letters were intended and designed to discredit the Union by impressing upon the employees the thought that they could gain no benefits or advantages through collective bargaining not obtainable through individual bargaining. Moreover, by inaccurately representing the Union's position on promotions, the respondent fostered an erroneous impression that the employees would suffer the loss of this valuable condition of employment should the Union prove successful. Beyond that, the letters served to disclose the opposition of the respondent's executive officers to the Union, thus adding color and support to the statements and activities of its supervisory employees as above described. Contrary to the contention of the respondent, it is found that the statements in the Ferbert letters, under all the circumstances of this case, were not protected by the right of free speech. Although "employers' attempts to persuade to action with respect to joining or not joining unions are within the First Amendment's guaranty," where, as here, "to this persuasion other things are added which bring about coercion or give it that character, the limit of the right has been passed."[32] The statements in the Ferbert letters, aside from any other considerations, must, like the verbal attacks,

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[31] See *Reliance Mfg. Co. v. N. L. R. B.*, 125 F. (2d) 311 (C. C. A. 7); *N. L. R. B. v. Sunbeam Electric Mfg. Co.*, 133 F. (2d) 856 (C. C. A. 7); *Matter of Republic Aviation Co.*, 61 N. L. R. B. 397.

[32] *Thomas v. Collins*, 323 U. S. 516.

be viewed not in isolation but in context with the respondent's entire course of anti-union conduct of which it was part. In that context it is found to have constituted a form of "pressure exerted vocally by the employer [which] may no more be disregarded than pressure exerted in other ways" and to have exceeded the permissible limits of free speech.[33] The restraining character and effect of the letters, as well as the respondent's conduct as a whole, were not nullified by the statements in the letters that the employees had the right to join or not to join a labor organization. The letters were received in an atmosphere already charged with the supervisors' attitude of hostility and opposition to the Union. And, even if these statements were intended as an assurance that employees would not be discriminated against because of their union activities, the assurance was rendered meaningless and suspect in the eyes of the employees by the respondent's entire course of coercive, intimidatory, and discriminatory conduct, both before and after the receipt of these letters.[34]

There is no merit to the respondent's contention that it must be acquitted of responsibility for the acts and statements of its supervisory employees because, as it claims, at a meeting held before the start of the 1944 sailing season its masters and chief engineers were instructed that the choice of a collective bargaining representative was a matter which concerned employees alone, and that they were not to interfere in any way with the union organization or activities. The respondent supports its claim that such instructions were in fact given upon the testimony of Industrial Relations Manager William Garbett, testimony which the undersigned considers dubious at best in light of the fact that two ship officers of the respondent who were present at the 1944 meeting could not while testifying recall that any such instructions were given. Moreover, the

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[33] *N. L. R. B. v. Virginia Electric & Power Co.*, 314 U. S. 469, 477. See also, *N. L. R. B. v. Trojan Powder Co.*, 135 F. (2d) 337, (C. C. A. 3) cert. den. 320 U. S. 768, 813; *N. L. R. B. v. M. E. Blatt Co.*, 143 F. (2d) 268, 274 (C. C. A. 3), cert. den. 323 U. S. 774.

[34] See *Matter of Agar Packing & Provision Corporation*, 58 N. L. R. B. 738; *Matter of Republic Aviation Corporation*, 61 N. L. R. B. 397.

Ferbert letters themselves belie the respondent's protesta tions that its executive officers were neutral. But even i it be assumed that such instructions were given, the re spondent is not relieved of liability, since, as is conceded the instructions were never communicated to the employees The employees were justified in viewing the statement and activities of the licensed officers, the only representa tives of the respondent with whom they came into contact as reflecting the will of management. The statements and activities of the supervisory employees were in law and effect the action of the respondent for which it is account able.

It is found that the statements and acts outlined above constituted integral parts of a course of conduct, engaged in by the respondent, which the respondent intended should, and which in fact did, interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. The discriminatory discharge of Howard Shartle

Howard Shartle, a certified able seaman (i.e., A.B.) was hired by the respondent on March 31, 1944, as a watchman on its steamer *Irving S. Olds.* Shartle had had little previous sailing experience at the time. He had obtained his A.B. certificate the preceding July after 3 months training at a government operated shore training school, 3 months service as an apprentice seaman on Great Lakes vessels, and the successful completion of a United States Coast Guard qualifying examination. This, coupled with several months sailing thereafter on ocean vessels, represented the full sum of his experience up to that point. Shartle's limited experience was fully known to the respondent when it hired him.

A member of the Union before he joined the *Olds,* Shartle admittedly sought employment with the respondent in part because he had volunteered to assist in the Union's efforts to organize the respondent's fleet. Upon joining the *Olds,* he was designated as its ship organizer, and, thereafter, according to his credited, and in that respect, uncontradicted testimony, openly and actively engaged in organizing work among members of the unlicensed per-

sonnel. The officers of the *Olds* who appeared as witnesses admitted that during Shartle's employment term they were aware of organizing activities aboard that vessel, but they asserted that they did not acquire knowledge that Shartle was the organizer until after his discharge. However, affirmative evidence that Shartle's organizing activities came to the attention of the *Olds'* officers prior to his discharge is found in Shartle's testimony, partially undenied and credited by the undersigned, that while he was aboard the *Olds,* he distributed copies of the *Pilot,* the Union's official publication, to the second and third mates and to the three engineers.[35] Moreover, a realistic view of the matter, makes it evident that Shartle's position as organizer on the *Olds,* even if not revealed directly by him to the ship's officers, could not long have escaped their notice. The respondent did not deny, indeed it asserted, that on a small ship such as the *Olds* where men live, eat and work together for 24 hours a day, news of any interest, including news of

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[35] The assistant engineers were not called by the respondent to testify on this point. Second Mate Joseph Chrobak and Third Mate Frank Hewer, although admitting that they observed copies of the *Pilot* as well as other union literature aboard the ship, denied that Shartle had ever distributed the *Pilot* to them. Hewer testified he "did not believe" that he discovered Shartle was an organizer until the day Shartle left the ship when, he testified, a wheelsman happened to mention it to him; but his testimony as to how the subject arose at that time was vague, hesitant, and generally unconvincing; nor did his demeanor while testifying on that point invite credence. Inconsistently with Hewer's testimony, Chrobak testified that he as well as the other two mates first learned that Shartle had been the organizer about 3 days after his discharge when an article appeared in a Cleveland newspaper (not produced) reporting that a charge had been filed with the Board alleging that Shartle was discharged for union activity—testimony which the undersigned finds wholly incredible since the proceedings in this case show that no charge was in fact filed with the Board until many months later. On other vessels where it appears that the Union's ship organizers, like Shartle, joined the respondent's fleet expressly for the purpose of assisting the Union's organizational drive, it is undisputed that the organizers made no secret of their activities and made it their practice to distribute the *Pilot* to licensed as well as unlicensed personnel. Shartle's testimony that he also did so thus impresses the undersigned as both reasonable and probable, and it is credited notwithstanding the denials which the undersigned finds unconvincing.

organizing activities, spreads about quickly, to licensed as well as unlicensed personnel.[36] On other of the respondent's vessels about which evidence was taken, it was undisputed that the ship officers learned the identity of the organizers shortly after the vessels began to sail. The presence in this case of proof reflecting a predilection on the part of masters and mates for concerning themselves unduly with the Union's organizational efforts, by interrogation and otherwise, only fortifies the conclusion that Shartle's activities were known to the respondent. Upon the record as a whole, the undersigned is persuaded and finds that the respondent and its officers responsible for the discharge knew of Shartle's organizing position at the time of his discharge.

Shartle was employed by the respondent from March 31 to April 24, 1944, when he was discharged without prior warning. While the vessel was being fitted out for sailing during the first few days of his employment, Shartle was assigned to painting work under the supervision of Second Mate Chrobak. After the vessel began to sail, he was assigned to the watch of Third Mate Hewer and worked under Hewer's supervision for the balance of his employment term. Shartle was not discharged by either of these mates, nor did they, according to their own testimony, at any time recommend his discharge, although it not only was within their authority, it was their duty to recommend for discharge those under them whom they found incompetent.

Shartle was discharged by First Mate Dobson. In reaching his decision, Dobson did not consult the other mates,[37] nor did he, according to his testimony, consult

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[36] Thus, Captain Gerlach of the *Morse,* testifying as to the manner in which he discovered that Weissflog was the organizer on that vessel, said:

"Well, in a small space of a boat, thirty-six men, you pick up a drop here, a drop there and his name was mentioned, I don't know by who it was, probably one of the cooks."

[37] Second Mate Chrobak testified that he neither recommended nor had anything to do with the discharge, except that he had complained to the first mate about Shartle's painting during the first week of Shartle's employment. Third Mate Hewer, who, rather than First Mate Dobson, had supervision over the performance of Shartle's work during the last 2½ weeks of his employ-

(*Continued on following page*)

Captain Murray, the master of the vessel. As will be recalled from the findings heretofore made, it was Dobson who, on a subsequent occasion, also discharged Vogel, Shartle's successor as organizer, but later revoked his discharge order.

At the time of his discharge, Shartle was informed that he was being released for incompetence. He was not, however, advised of the respects in which it was claimed he was incompetent. He was replaced by an ordinary seaman, no A.B. being obtainable, and the *Olds*, which under the governing maritime regulations was required to carry a complement of eight A.B.'s, but which, because of the shortage of A.B.'s had started the season with seven, thereafter sailed with only six A.B.'s.

In support of its defense that Shartle was discharged for incompetence,[38] the respondent urged: (a) that Shartle was incapable of wheeling the vessel; (b) that he was a poor or unwilling painter, and during the fit-out season attempted to interfere with the work of other painters; (c) that he did not possess leadership qualities; (d) that he was unable to handle the electric winches on the vessel; and (e) that he had shown himself incapable of doing splicing work, the last being the final and deciding cause for the discharge.

(*Continued from preceding page*)

ment, testified that the first mate did not ask his opinion as to whether Shartle should be discharged and that he did not recommend the action. As to whether he ever did express his opinion to Dobson as to Shartle's general ability, Hewer's testimony was contradictory. At one point, he testified that he could not recall ever doing so; but at another point he testified that about a week before the discharge, Dobson asked him how Shartle was getting along and that he then told him "there was a number of things that he was doing that weren't up to par, could be much better."

[38] At the hearing the respondent assigned as an additional reason for the discharge the claim that Shartle was late in reporting for work on about two occasions during the first few days of his employment, but this claim appears to have been abandoned by it in its brief. In any event the undersigned finds this claim unsupported by the record. Shartle admitted that he had been late on one occasion only, when the undisputed evidence shows, he had at the respondent's request visited a company physician for a physical check-up. The respondent failed to adduce any specific evidence with respect to the other claimed latenesses, and admitted that Shartle had never been reprimanded for being late.

It is clear, despite the respondent's assertion of this claim, that Shartle's wheeling capacities could not have been a contributing factor in the decision to discharge him. For, apart from the fact that the credible evidence fails to support this claim,[39] the record establishes without dispute that it was not even part of Shartle's duties, in his capacity as watchman, to wheel the vessel.

The claim that Shartle was an unwilling or a poor painter is based principally upon Second Mate Chrobak's testimony that during the fit-out period when Shartle was assigned to paint the hull, he constantly lagged in his work and permitted Vogel, his staging partner, to perform three-quarters of their assigned task, while himself performing only one-quarter, and, further, that he persistently, throughout that period, urged the other painters to slow down. This testimony impressed the undersigned as greatly exaggerated, and unreliable. It is highly improbable, under the circumstances described by Chrobak, that he and the other responsible officers would have permitted such a situation to continue throughout the fit-out period without taking any disciplinary action. Nor is it likely that Shartle's staging partner would have failed to register a complaint about his extra work load, as it was conceded he did not. Shartle's testimony, corroborated by Vogel, that he had never been criticized or reprimanded for his work in painting the hull is credited.[40] In any event, even if it be assumed that Shartle was slower than the others in his painting work and engaged in the other conduct attributed to him during

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[39] Captain Murray, the respondent's witness on this phase of the case, testified that in line with his practice of training young seamen he had called Shartle into the wheelhouse on one occasion for the purpose of determining whether Shartle had any steering ability, and had come to the conclusion that he had not. Shartle denied that he had on that occasion shown an inability to steer, and his testimony was substantially corroborated by Third Mate Hewer who was present at that time and who testified that Shartle had handled the wheel "all right." Shartle's corroborated testimony is credited.

[40] Chrobak's testimony that he "called" Shartle about his painting work on two occasions was unsupported by detail and lacked conviction. It is significant that although Shartle's painting work was allegedly reported to Dobson at the time, Dobson did not then consider it of sufficient consequence to warrant a reprimand, much less disciplinary action.

the fit-out period, it is clear that this was condoned by the respondent, for Shartle was permitted after the fit-out period to sail with the vessel. Moreover, it is significant that Dobson admittedly did not so much as reprimand Shartle for his work during the fit-out period, although his work at that time, if Chrobak's testimony were believed, represented the most serious charge of incompetency found in the record of this case.

Concerning the claim that Shartle did not possess leadership qualities, the only evidence in the record appears in the form of conclusionary assertions by Mates Dobson and Hewer, too vague and general to permit appraisal.[41] Hewer, when requested to support his conclusionary testimony by reference to specific examples, became confused and was unable to do so except in terms as indefinite and unconvincing as the testimony he was asked to illustrate. Dobson did not particularize his general statement at all. The respondent did not claim that Shartle had ever been criticized or reprimanded on this account. Under the circumstances, and for other reasons which will be hereinafter indicated, the undersigned cannot and does not attach weight or credence to the conclusionary testimony.

The claim that Shartle was deficient in the operation of the winches was specifically supported only by evidence of a single incident of claimed negligence on Shartle's part,[42] an incident which, according to the testimony of Hewer, occurred about 2 weeks before Shartle's discharge. On that occasion, the record shows, Shartle while operating a winch, failed to place a control lever in a proper position, a mistake which, if not corrected in time, could have resulted in the parting of the cable and possible injury to a bystander. The mistake on that occasion was, however, corrected by the supervising mate who adjusted the lever

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[41] The work on the vessel is laid out and supervised by the mates; when working with the deckhands on such things as cleaning jobs, the watchman acts as a group leader.

[42] The *Olds*, a modern vessel, is equipped, unlike most vessels to which seamen are accustomed, with electric winches to which the mooring cables are attached. New men aboard the vessel are not expected to know how to operate the winches; they are taught to do so by the mates; they work at first under the mates' close supervision, and gradually are allowed greater responsibility.

just in time, thereby averting the danger.[43] There is no specific evidence that Shartle at any other time made a similar or other mistake in the operation of the winch. Other seamen had committed the same error aboard vessels of the respondent but had not been discharged therefor.

In support of its claim that Shartle was incapable of splicing, the respondent relies on the following occurrence which, according to Dobson, motivated his ultimate decision to discharge Shartle, and which according to Shartle's credited testimony, represented the only occasion when his work had been subjected to criticism while in the respond ent's employ. About 3 days before his discharge Shartle was directed to splice a cringle with a tow line, a difficult assignment with which A.B.'s are expected to be familiar but which they are seldom called upon to perform. Shartle had never before performed this operation and his only previous experience with it, on another vessel, had been to act as helper to a mate. Shartle requested John Vogel, his roommate and an A.B. of 20 years experience, to give him a hand with the job. Working together, they were proceeding toward completion of the job, when Dobson approached them, commented that Shartle did not know how to splice rope, and summarily ordered both Shartle and Vogel to discontinue the job.[44] Later, when Vogel was on watch, he was directed to and did complete the job. Dobson admitted that during the past 4 years he had found other A.B.'s who were inexperienced in splicing, but that he had not considered this alone a cause for discharge. Shartle's testimony that the job referred to was one that occurred

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[43] Although Shartle, whose testimony the undersigned considered to be generally credible, denied during cross examination as a Board witness any recollection of this incident, the undersigned nevertheless believes that this incident occurred. The entire incident occurred during the space of time it takes to move a lever. It was not claimed by the respondent that Shartle was reprimanded for his negligence; Shartle was permitted thereafter, as before, to operate the winches under supervision; and there is no evidence that at that time the incident was heightened to the importance which is now attached to it by the respondent.

[44] Since Vogel was working voluntarily on his free time, and not at the request of any supervisor, the respondent would have incurred no liability for overtime payment or otherwise, had Vogel then been permitted to complete the work.

possibly once in 6 months is substantially corroborated by one of the mates who, when asked whether Shartle's successor in the job knew how to splice a cringle, testified that he did not know because during the balance of the season no further occasion to do so arose.

Upon close scrutiny the specifications assigned by the respondent in support of its defense of incompetency assume reduced and relatively insubstantial proportions. Shartle's isolated mistake in the operation of the winch, about 2 weeks before his discharge, and his unfamiliarity with the splicing technique, of rarely required application, were the only delinquencies on Shartle's part, occurring after the vessel began to sail, to which the record specifically and clearly points, and neither of these was regarded as a dischargeable offense standing alone. True, these incidents did reflect a certain lack of experience and skill. And it may even be assumed that in certain other respects, such as his ability to paint, or his ability to lead the deckhands, Shartle may have fallen somewhat short of the degree of skill and "know-how" possessed by old line seamen. But Shartle's limited experience was known to the respondent when it hired him, and was then considered unimportant. The record shows that during 1944, as in the other war years, the Great Lakes carriers were experiencing extreme difficulty in securing a sufficient supply of crew members in general and A.B.'s in particular, and were usually running 10 percent short in personnel. Consequently, as Industrial Relations Manager William Garbett testified, the respondent was willing to put up with more from its men than it ordinarily might, and, to use Garbett's figure of speech, was even taking on "one eyed and one legged men." The problem of obtaining and retaining a sufficient supply of A.B.'s was particularly important, since governing maritime rules and regulations require a minimum number of certificated A.B.'s on each vessel. Although the minimum requirement was not strictly enforced during the war years, it was recognized that any reduction in the required complement of A.B.'s was unsafe and unwise, and every effort was made to avoid it.

For that reason, as one officer of the *Olds* testified, although A.B.'s trained, like Shartle, at government schools, were often found to be inexperienced and unskilled, they

were not discharged on that account but were given training and instructions, among other things, in the handling of equipment, in leadership, and in painting, the very respects in which Shartle is claimed to have been deficient. Except for some evidence that Shartle was given some instructions in the operation of winches, the respondent did not claim that it ever found it necessary to instruct or train Shartle in other matters such as painting or leadership. The plain inference to be drawn from that is either that Shartle was not deficient in those respects as claimed, or that the respondent did not instruct Shartle because it desired to rid itself of him for reasons aside from the manner in which he performed his work. Surely, the summary and unexplained manner in which Dobson ordered both Shartle and Vogel from the splicing job did not reflect the normal attitude of a supervisor desirous of training an inexperienced man; on the contrary it reflected, as is found, a desire to seize upon this incident as a pretext for a discharge which the supervisor desired for other reasons.

In view of the shortage of certificated A.B.'s, the unavailability of any qualified replacements, the practice and policy of the respondent at that time to make every effort to retain and train inexperienced A.B.'s, its failure to do so in Shartle's case, and the other considerations outlined above, it is not believed that, absent other reasons, Dobson normally would have discharged Shartle without prior warning and without the recommendation of the supervising mate, at the time he did, solely upon Shartle's shortcomings as established by the evidence in this case. The other reasons are to be found, the undersigned is persuaded, in Shartle's outstanding position in union activities aboard the ship, and the respondent's (and Dobson's) hostility and opposition to the Union as reflected by the entire record in the case. Upon the record as a whole, the undersigned is convinced and concludes that Shartle was not in fact discharged for the reason ascribed by the respondent, that the claim of incompetency was merely the pretext for the discharge, and that the real reason for the discharge lay in Shartle's union activities. It is found that the respondent by discharging Shartle on April 24, 1944, and by failing thereafter to reinstate him, discriminated in regard to his hire and tenure of employment, thereby discouraging mem-

bership in the Union, and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Since it has been found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

It has been found that the respondent discriminated in regard to the hire and tenure of employment of Howard Shartle on April 24, 1944. It will be recommended that the respondent reinstate him to his former or substantially equivalent position without prejudice to his former rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the respondent's discrimination against him by payment to him of a sum of money equal to the amount he would have earned as wages during the period from the date of discrimination to the date of the offer of reinstatement, less his net earnings during said period.[45] Since the respondent's business is seasonal, its

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[45] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

vessels may not be in operation at the time said offer of reinstatement is made. In that event, the offer of reinstatement shall become effective at such time as the respondent's seasonal business next begins. In making Shartle whole he shall not be awarded back pay for the periods in which he normally would not have worked on the respondent's vessels, nor shall there be deducted as earnings any monies earned elsewhere by him during such periods.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. National Maritime Union of America (CIO) is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Howard Shartle, thereby discouraging membership in National Maritime Union of America (CIO), the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, The Pittsburgh Steamship Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America (CIO) or any other labor organization of its employees, by discharging, or refusing to reinstate

any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist National Maritime Union of America (CIO), or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to Howard Shartle immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, in the manner set forth above in the section entitled, "The remedy."

(b) Make whole Howard Shartle for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post on each of its vessels operated on the Great Lakes copies of the notice attached hereto, marked "Appendix A." Copies of said notice to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent at the beginning of its 1946 sailing season and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places on each of its vessels, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that such notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Eighth Region in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken and will take to comply herewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 27, 1945, as amended, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

ARTHUR LEFF
Trial Examiner

Dated: December 28, 1945.

APPENDIX A.

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right

to self-organization, to form labor organizations, to join or assist National Maritime Union of America (CIO) or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

Howard Shartle

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

THE PITTSBURGH STEAMSHIP COMPANY
(Employer)

Dated .....By .....
(Representative) (Title)

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

ORDER TRANSFERRING CASE TO THE NATIONAL LABOR RELATIONS BOARD.

(Entered January 2, 1946 by John E. Lawyer, Chief, Order Section.)

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington, D. C.,

IT IS HEREBY ORDERED, pursuant to Article II, Section 32, of National Labor Relations Board Rules and Regulations—Series 3, as amended, that Case No. 8-C-1696 be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., January 2, 1946.

By direction of the Board:

JOHN E. LAWYER
Chief, Order Section

COMPANY'S LETTER, JANUARY 5, 1946, REQUESTING EXTENSION OF TIME TO FILE EXCEPTIONS AND BRIEF.

January 5, 1946

National Labor Relations Board,
Rochambeau Building,
Washington 25, D. C.

Gentlemen:

In the Matter of The Pittsburgh Steamship Company and National Maritime Union of America (CIO)
Case No. 8-C-1696

We acknowledge receipt of a copy of the Intermediate Report of the Trial Examiner in the above entitled matter and note that the case has been transferred to and continued before the Board as of January 2nd, 1946.

We intend to file exceptions to the Intermediate Report. Inasmuch as the Report and the record upon which the Report is based are lengthy, it will not be possible for us to file the exceptions within the fifteen day period from the date of the entry of the order transferring the case to the Board. We therefore kindly request that the time for filing the exceptions and supporting brief be extended to February 2nd, 1946.

A copy of this letter is being sent to Mr. Louis S. Belkin, Counsel for the Board, and to Mr. Herman Rosenfeld, Counsel for the Union.

Very truly yours,

DUNCAN LECKIE MCCREARY SCHLITZ & HINSLEA

/s/ By Lucian Y. Ray

TELEGRAM, JANUARY 8, 1946, GRANTING ALL PARTIES EXTENSION OF TIME TO FILE EXCEPTIONS AND BRIEFS.

National Labor Relations Board
Cleveland, Ohio

jel/fm

Lucian Y. Ray
1970 Union Commerce Bldg.
Cleveland, Ohio

January 8, 1946

Herman Rosenfeld
291 Broadway
New York, New York

Re: Pittsburgh Steamship Company 8-C 1696 Time for filing exceptions and brief extended to February 2.

National Labor Relations Board

COMPANY'S LETTER, JANUARY 9, 1946, REQUESTING ORAL ARGUMENT.

January 9, 1946

National Labor Relations Board,
Rochambeau Building,
Washington, D. C.

Gentlemen:

In the Matter of Pittsburgh Steamship Company and National Maritime Union of America (CIO) Case No. 8-C-1696

Under the Board's order this case has been transferred to and continued before the Board as of January 2, 1946. On behalf of the Pittsburgh Steamship Company, we hereby respectfully request permission to argue said company's exceptions to the Intermediate Report of the Trial Examiner orally before the Board.

A copy of this letter is being sent to counsel for the Union and for the Board.

Very truly yours,

DUNCAN LECKIE MCCREARY SCHLITZ & HINSLEA

By /s/ Lucian Y. Ray

RESPONDENT'S EXCEPTIONS TO INTERMEDIATE REPORT OF THE TRIAL EXAMINER.

(Dated February 14, 1946.)

Comes now The Pittsburgh Steamship Company, respondent herein, and files the following exceptions to the Intermediate Report of the Trial Examiner:

I.

It excepts to the entire Intermediate Report on the ground that the findings and conclusions contained therein are not supported by a fair preponderance of the credible evidence, nor by a fair appraisal of the credibility of the various witnesses, but are based upon an arbitrary rejection of the respondent's evidence.

II.

It excepts to the general conclusion that the statements and acts of the respondent's supervisors, as outlined in the Report, constituted integral parts of a course of conduct, engaged in by the respondent, which respondent intended should, and which in fact did, interfere with, restrain and coerce its employees in the exercise of the rights guaranteed by Section 7 of the Act, on the ground that said conclusion is based upon an unreasonable inference from the facts established by a fair preponderance of the credible evidence.

III.

It excepts to the conclusion that the coercive and intimidating remarks and activities of seven or eight of the respondent's supervisory employees, out of a total of approximately six hundred supervisors, constituted a pattern or course of conduct which was violative of the Act and it excepts to the failure of the Trial Examiner to conclude that such remarks and such activities, even if found to be coercive and intimidating in character, were sporadic expressions of opinion of the particular supervisors and did not constitute a pattern or course of conduct violative of the Act.

IV.

It excepts to the conclusion that the so-called Ferbert Letters was a device employed by the respondent in its offensive against the Union, which was an integral part of the respondent's entire course of coercive conduct on the ground that said conclusion is based upon an unreasonable inference from the facts established by a fair preponderance of the credible evidence.

V.

It excepts to the finding that the Ferbert Letters contain statements misrepresenting the Union's position on rotary hiring and misrepresenting the Union's part in the securing of higher wages on the ground that said finding is not supported by a fair preponderance of the credible evidence.

VI.

It excepts to the conclusion that the Ferbert Letters falsely posed the election issue as a contest between the Union and the Respondent for the allegiance of its employees on the ground that said conclusion is based upon an unreasonable inference from the facts established by a fair preponderance of the credible evidence.

VII.

It excepts to the conclusion that the Ferbert Letters serve to disclose the opposition of the respondent's executive officers to the Union, thus adding color and support to the statements and activities of its supervisory employees, on the ground that said conclusion is based upon an unreasonable inference from the facts established by a fair preponderance of the credible evidence.

VIII.

It excepts to the failure of the Trial Examiner to find that the Ferbert Letters and the statements contained therein were within the protection of the right of free speech accorded to the respondent by the provisions of the First Amendment of the Constitution.

IX.

It excepts to the failure of the Trial Examiner to find that the respondent's executive officers, at a meeting of its captains and chief engineers, held prior to the election here involved and at another meeting held during the spring of 1945, instructed those supervisors to maintain a strictly impartial attitude towards the Union and to see that the mates and assistant engineers were so instructed.

X.

It excepts to the finding that the respondent, by discharging Howard Shartle on April 24, 1944, and by failing thereafter to reinstate him, discriminated in regard to his hire and tenure of employment, thereby discouraging membership in the Union and interfering with and restraining organizational efforts of the Union on the ground that such finding is not supported by a fair preponderance of the credible evidence. It further excepts to the failure of the

Trial Examiner to find that Shartle was discharged by the respondent, for cause.

XI.

It excepts to the findings that Captain Brinker was not worthy of belief and that Lee was a credible witness; that Captain Brinker's conversations with Lee were coercive and intimidating in character and that the respondent attempted to have Lee discharged because of his Union activities on the ground that such findings are not supported by a fair preponderance of the credible evidence. It further excepts to the failure of the Trial Examiner to find that Lee was guilty of driving seamen off the vessel by reason of his Union activities and that Captain Brinker was justified in admonishing him in that connection. It further excepts to the failure of the Trial Examiner to find that Lee became a member of the crew of the Steamer William J. Filbert for the sole purpose of organizing the unlicensed members of the crew and that he wilfully and knowingly "baited" Captain Brinker in front of other members of the crew for the express purpose of disseminating Union doctrines.

XII.

It excepts to the finding that the accounts given by Sims and George Anderson as to the conversations and activities of Captain Wallace and First Assistant Engineer Kermit Anderson of the Steamer Horace Johnson are credible, acceptable and found as a fact, on the ground that such finding is without proper basis in the record.

XIII.

It excepts to the finding that Captain Don Lawless and other members of the crew of the Steamer Robert W. Bunsen were guilty of making intimidating and coercive remarks in the presence of unlicensed members of the crew of said vessel and to the further finding that to the extent that Vogt's testimony is at variance with that given by Captain Lawless and Third Mate Carr, that Vogt's testimony is to be credited and their testimony rejected, on the ground that such findings are not supported by a fair preponderance of the credible evidence.

XIV.

It excepts to the findings that Captain Lehne and Chief Engineer Hunger of the Str. Peter A. B. Widener were guilty of making anti-union statements and engaging in coercive and intimidating activities and that Babin, on a number of occasions, during the pre-election period, in the presence of deckhands over which he had charge, was subjected, because of Union activities, to unnecessary and unwarranted criticism of his work, on the ground that such findings are not supported by a fair preponderance of the credible evidence. It further excepts to the failure of the Trial Examiner to find that Captain Lehne was justified in admonishing Babin in connection with his Union activities and that Chief Engineer Hunger was justified in excluding Babin from the engine room of that vessel.

XV.

It excepts to the finding that Captain Gerlach of the Steamer Samuel F. B. Morse was an evasive witness whose testimony indicated a paramount desire to conform to what he conceived to be the respondent's theory of the case; to the finding that Captain Gerlach was guilty of coercive and intimidating activity in connection with Zmrazek and Weissflog; to the finding that Chief Engineer Haller and First Mate Zyp were guilty of anti-union statements and activities during the pre-election period, on the ground that such findings are not supported by a fair preponderance of the credible evidence.

XVI.

It excepts to the conclusion that the respondent conducted an offensive against the Union on the ground that said conclusion is based upon an unreasonable inference from the facts established by a fair preponderance of the credible evidence.

XVII.

It excepts to the conclusion that respondent's agents made statements to crew members carrying either outright threats of economic reprisal or connotation of the same import, on the ground that said conclusion is based

upon an unreasonable inference from the facts established by a fair preponderance of the credible evidence.

XVIII.

It excepts to the finding that agents of the respondent were guilty of threatening to discharge Union organizers for engaging in Union activities, on the ground that said finding is not supported by a fair preponderance of the credible evidence.

XIX.

It excepts to the finding that agents of the respondent were guilty of intimidation in the form of discrimination and abusive treatment of employees acting as volunteer Union organizers, on the ground that said finding is not supported by a fair preponderance of the credible evidence.

XX.

It excepts to the finding that agents of the respondent were guilty of surveillance of the Union activities of the crew members and were guilty of interrogation by the officers as to those activities on the ground that said finding is not supported by a fair preponderance of the credible evidence.

XXI.

It excepts to the finding that the respondent, through its agents, directly interfered with the Union organizational efforts by imposing or attempting to impose restraints upon solicitation activities of certain of the Union's organizers on the ground that such finding is not supported by a fair preponderance of credible evidence. It further excepts to the failure of the Trial Examiner to find that such restrictions as to Union solicitation as were imposed were reasonable and justified in furtherance of the efficient operation of the respective vessels as navigational units.

XXII.

It excepts to the finding that the respondent, through its agents, was guilty of verbal attacks against the Union and of deliberately injecting into their conversations with

unlicensed personnel the Union's policy of equality between negro and white seamen on the ground that said finding is not supported by a fair preponderance of the credible evidence. It further excepts to the failure of the Trial Examiner to find that such verbal attacks, if any, were isolated expressions of the personal opinion, which were not coercive in character and which were privileged as free speech.

XXIII.

It excepts to each and every recommendation of the Trial Examiner on the ground that the record herein does not support the findings of fact and conclusions of law upon which the recommendations are based.

WHEREFORE, the respondent now respectfully prays that the Board reject the findings, conclusions and recommendations of the Intermediate Report of the Trial Examiner and that an order be entered dismissing the complaint herein.

Respectfully submitted,

DUNCAN LECKIE MCCREARY SCHLITZ & HINSLEA,

Counsel for Respondent.

LEE C. HINSLEA,
LUCIAN Y. RAY,
Of Counsel.

Service.

A true copy of the foregoing exceptions to the Intermediate Report of the Trial Examiner has been mailed this 14th day of February, 1946, to Mr. Herman Rosenfeld, 291 Broadway, New York, N. Y., counsel for the Union, and to Mr. Louis S. Belkin, Public Square Building, Cleveland, Ohio, counsel for the Board.

LUCIAN Y. RAY,

Of Counsel for Respondent.

NOTICE OF HEARING FOR ORAL ARGUMENT.

(Dated May 23, 1946.)

PLEASE TAKE NOTICE that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Thursday, June 27, 1946, at 10:30 a.m., or as soon thereafter as the Board may hear you, in the Hearing Room at 815 Connecticut Avenue Northwest, Washington, D. C., for the purpose of oral argument in the above-entitled matter. Argument will be limited to one-half hour for each party, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing will be granted.

You may appear and be heard if you so desire.

Should the party requesting oral argument decide not to appear, such party must immediately notify the Board and all other parties. This is necessary in order to avoid serious inconvenience and expense to other parties.

Dated, Washington, D. C., May 23, 1946.

JOHN E. LAWYER,
Chief, Order Section.

LIST OF APPEARANCES AT ORAL ARGUMENT HELD JUNE 27, 1946.

NATIONAL LABOR RELATIONS BOARD

Date June 27, 1946
Time Began 10:45
Time Ended 12:00

BOARD MEMBERS PRESENT
1. Mr. Herzog
2. .....
3. Mr. Houston

ORAL ARGUMENT

CASE No. 8-C-1696 NAME Pittsburgh Steamship Company

Appearances:

A) *Of Counsel to the Board*:
Review Attorney: Mr. Geltman

B) *For the Company*:
Name: Mr. L. C. Hinslea
Address: 1970 Union Commerce Bldg.
Cleveland, Ohio

C) *For the Union*: National Maritime Union of America, C.I.O.
Name: Mr. Herman Rosenfeld
Address: 291 Broadway
New York, New York

DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

(Entered August 13, 1946 by Paul M. Herzog, Chairman, and John H. Houston, Member.)

On December 28, 1945, Trial Examiner Arthur Leff issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Inter-

mediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. On June 27, 1946, the Board heard oral argument at Washington, D. C., in which the respondent and the Union participated.

The Board has reviewed the Trial Examiner's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions and brief, the contentions advanced at the oral argument before the Board, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the corrections[1] and additions noted below.

1. We agree with the Trial Examiner that the respondent by the numerous acts and statements, including the Ferbert letters, detailed in the Intermediate Report, engaged in a course of conduct violative of the Act. While the Ferbert letters are not unlawful *per se*, we find, like the Trial Examiner, that they constitute an integral and inseparable part of the respondent's otherwise illegal course of conduct and when so viewed they assume a coercive character which is not privileged by the right of free speech.

2. We agree with the Trial Examiner that the respondent discharged Howard Shartle because of his connection with and activities on behalf of the Union, and not because Shartle was an incompetent employee. In so agreeing, we rely on all the reasons assigned by the Trial Examiner and in addition the significant fact that First Mate Dobson, who discharged Shartle, also discharged John Vogel, Shartle's successor as the Union's organizer on the ship, when Dobson learned of Vogel's organizing activities.[2]

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[1] In footnote 8 of the Intermediate Report, the Trial Examiner erroneously states that McGuiness admitted "that Lee had not in fact bothered him to join the Union." In fact, McGuiness testified that on occasions Lee had solicited him to join the Union but, that he had not reported this fact to his supervisor. The Intermediate Report is hereby corrected in this respect.

[2] Vogel's discharge was later rescinded due to the fact that the ship was about to sail and there was insufficient time for Vogel to pack his clothes.

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Pittsburgh Steamship Company, Cleveland, Ohio, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America (CIO) or any other labor organization of its employees, by discharging, or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire and tenure of employment, or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization to form labor organizations, to join or assist National Maritime Union of America (CIO), or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining, or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Howard Shartle immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges, in the manner set forth in the section of the Intermediate Report entitled, "The remedy."

(b) Make whole Howard Shartle for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post on each of its vessels operated on the Great Lakes, copies of the notice attached to the Intermediate

Report herein, marked Appendix A.[3] Copies of said notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon the receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places on each of its vessels, including all places where notices to employees are customarily posted.[4] Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Eighth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 13 day of August 1946.

PAUL M. HERZOG
Chairman

JOHN M. HOUSTON
Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

Affidavit as to Service.

DISTRICT OF COLUMBIA, SS:

I, Edward J. McGovern, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 13th day of August, 1946, I mailed postpaid, bearing Government frank, by registered mail, a copy of the DECISION & ORDER [and Intermediate Report]

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[3] Said notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "The Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order."

[4] It is intended that the copies of the said notice shall be posted for sixty consecutive days during the sailing season. If the sailing season terminates before the sixty day period expires, the copies of said notice shall be posted during the ensuing sailing season for the balance of the sixty-day period.

to the following-named persons, addressed to them at the following addresses:

DUNCAN, LECKIE, MCCREARY, SCHLITZ & HINSLEA, 69002
Att: L. C. HINSLEA and
LUCIAN Y. RAY, Esquires,
1970 Union Commerce Building,
Cleveland, Ohio.

WILLIAM L. STANDARD, Esquire,
Att: MR. HERMAN ROSENFELD, 69003
291 Broadway,
New York, New York.

Subscribed and sworn to
before me this 13th day
of August 1946 EDWARD J. MCGOVERN

MERLE J. SMITH
Designated Agent for the
National Labor Relations Board

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD.

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 203.67, Rules and Regulations of the National Labor Relations Board—Series 4, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled, "In the Matter of The Pittsburgh Steamship Company and National Maritime Union of America (CIO)," the same being Case No. 8-C-1696 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order designating Arthur Leff Trial Examiner for the National Labor Relations Board, dated July 26, 1945.

(2) Stenographic transcript of testimony held before Trial Examiner Leff on July 26, 27, 28, August 28, 29, 31, September 1, 2, 3, 5, and October 2, 1945, together with all exhibits introduced in evidence.

(3) Copy of Company's letter, dated October 3, 1945, requesting extension of time to file brief before the Trial Examiner.

(4) Copy of telegram, dated October 8, 1945, granting all parties extension of time to file briefs before the Trial Examiner.

(5) Copy of Trial Examiner Leff's Intermediate Report, dated December 28, 1945 (annexed to item 13 hereof).

(6) Copy of order transferring the case to the Board, dated January 2, 1946.

(7) Copy of Company's letter, dated January 5, 1946, requesting extension of time to file exceptions and brief.

(8) Copy of telegram, dated January 8, 1946, granting all parties extension of time to file exceptions and briefs.

(9) Copy of Company's letter, dated January 9, 1946, requesting oral argument before the Board.

(10) Copy of Company's exceptions to the Intermediate Report.

(11) Copy of notice of hearing for the purpose of oral argument, dated May 23, 1946.

(12) Copy of list of appearances at oral argument held before the Board on June 27, 1946.

(13) Copy of Decision and Order, issued by the National Labor Relations Board on August 13, 1946, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

IN TESTIMONY WHEREOF, the Chief of the Order Section of the National Labor Relations Board, being thereunto authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 18th day of November, 1946.

JOHN E. LAWYER,
Chief, Order Section,
NATIONAL LABOR RELATIONS BOARD.

No. 10,372.

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT.

THE PITTSBURGH STEAMSHIP COMPANY,
Petitioner on Review,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent on Review.

PETITION FOR REVIEW.

(Filed October 18, 1946.)

Now comes The Pittsburgh Steamship Company, a corporation, through its attorneys, Leckie McCreary Schlitz & Hinslea, and hereby petitions the United States Circuit Court of Appeals for the Sixth Circuit to review the Decision and Order entered by the National Labor Relations Board on August 13, 1946, in which this petitioner was ordered to cease and desist from engaging in certain specified unfair labor practices and in which it is ordered to offer immediate and full reinstatement to one Howard Shartle; to make Shartle whole for any loss of pay suffered as a result of his alleged wrongful discharge and to post and maintain for sixty consecutive days, on each of its vessels operated on the Great Lakes, notices indicating compliance with the Board's Order.

This Petition for Review is filed pursuant to the provisions of Section 10 (f) of the National Labor Relations Act; (Act of July 5, 1935, 49 Stat. 449, U. S. C. A. 160 (f)). The petitioner's principal office and place of business is in Cleveland, Ohio, which is within the jurisdiction of the United States Circuit Court of Appeals for the Sixth Circuit.

The points on which the petitioner intends to rely are:

1. The Order of the National Labor Relations Board is invalid because the Board has not made its own independent findings of the facts upon which the Order is allegedly based, in violation of the require-

ments of Section 10 (c) § 160 (c) of the National Labor Relations Act.

2. The Board by adopting as its own, the findings, conclusions and recommendations of the Trial Examiner, which in turn are based upon a complete rejection of all of the respondent's testimony as unreliable and unworthy of belief, and a complete acceptance of all of the Union testimony as reliable and worthy of belief, has failed to make true and fair findings as required by the Act.

3. If this Court should rule that the Board has made independent findings of fact in support of its Order, then the findings so made are not supported by substantial evidence.

4. The Board erred in ruling that the alleged anti-union statements and activities of a few of the respondent's many supervisors constituted a pattern or course of conduct on the part of the respondent which was violative of the Act.

5. The Board erred in ruling that the so-called Ferbert letters were not privileged by the right of free speech, and constituted an "integral and inseparable part of the respondent's otherwise illegal course of conduct."

6. The Board has exceeded its authority, under the Act, in ordering the respondent to post a copy of the notice attached to the Interim Report, on each of its vessels operated on the Great Lakes when the alleged unfair labor practices occurred on but a few vessels of the respondent's fleet.

Respectfully submitted,

LECKIE MCCREARY SCHLITZ & HINSLEA,
1970 Union Commerce Building,
Cleveland 14, Ohio,
MAin 1117.

By LEE C. HINSLEA,
LUCIAN Y. RAY,
Counsel for Petitioner.

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW OF THE PITTSBURGH STEAMSHIP COMPANY, AND PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

(Filed November 20, 1946.)

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

Comes now the National Labor Relations Board, and pursuant to the National Labor Relations Act (49 Stat. 449, U. S. C., Supp. V., Title 29, Sec. 151, *et seq.*), herein called the Act, files this answer to the petition of The Pittsburgh Steamship Company, herein called petitioner, to review and set aside an order of the National Labor Relations Board.

1. The Board admits each and every allegation contained in the second unnumbered paragraph of the Petition for Review.

2. The Board denies each and every allegation contained in points "1" through "6" inclusive, of the Petition for Review.

3. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law and order of the Board were and are in all respects valid and proper under the Act and prays reference to the certified transcript of record, filed herein, for a full and exact statement of the pleadings, testimony and evidence, findings of fact, conclusions of law and order of the Board and all other proceedings had in this matter.

WHEREFORE, having answered each and every allegation contained in the Petition for Review, the Board respectfully prays this Honorable Court that said petition is denied.

Further answering the Petition for Review, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully petitions this Honorable Court for enforcement of its order issued against The Pittsburgh Steamship Company, on August 13, 1946, in a proceeding designated on the records of the Board as Case No. 8-C-1696, entitled "In the Matter of The Pittsburgh Steamship Company and National Maritime Union of America (C. I. O.)."

In support of its Petition for Enforcement of its order, the Board respectfully shows:

(1) The Pittsburgh Steamship Company, a West Virginia corporation, with its principal office and place of business in Cleveland, Ohio, is engaged in business within this judicial circuit. This Court has jurisdiction of the Petition for Review herein and of this request for enforcement by virtue of Section 10 (e) and (f) of the Act.

(2) Upon all proceedings had in said matter, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is hereby made, and including a complaint, answer, hearing for the purposes of taking testimony and receiving other evidence, Trial Examiner's report and exceptions filed thereto, the Board on August 13, 1946, duly stated its findings of fact and conclusions of law, and issued its order directed to petitioner, its officers, agents, successors, and assigns. So much of the order as relates to this proceeding provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Pittsburgh Steamship Company, Cleveland, Ohio, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America (CIO) or any other labor organization of its employees, by discharging, or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire and tenure of employment, or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization to form labor organizations, to join or assist National Maritime Union of America (CIO), or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for

the purpose of collective bargaining, or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Howard Shartle immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges, in the manner set forth in the section of the Intermediate Report entitled, "The remedy."

(b) Make whole Howard Shartle for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post on each of its vessels operated on the Great Lakes, copies of the notice attached to the Intermediate Report herein, marked Appendix A.[3] Copies of said notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon the receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places on each of its vessels, including all places where notices to employees are customarily posted.[4] Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Eighth Region in writing, within ten (10) days from the date

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[3] Said notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "The Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order."

[4] It is intended that the copies of the said notice shall be posted for sixty consecutive days during the sailing season. If the sailing season terminates before the sixty-day period expires, the copies of said notice shall be posted during the ensuing sailing season for the balance of the sixty-day period.

of this Order, what steps the respondent has taken to comply herewith.

(3) On August 13, 1946, the Board's Decision and Order was duly served upon The Pittsburgh Steamship Company, and all other parties.

(4) Pursuant to Section 10 (e) and (f) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this answer and petition for enforcement and of the filing of the certified transcript of the entire record in this proceeding to be served upon petitioner and that this Court take jurisdiction of the proceeding and of the questions to be determined therein and to make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon so much of the order made thereupon as set forth in paragraph (2) hereof, a decree denying the petition to review said order and enforcing in whole said order of the Board, and requiring petitioner, and its officers, agents, successors, and assigns to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the aforementioned notice to be posted by petitioner, marked "Appendix A," shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "APPENDIX A, NOTICE TO ALL EMPLOYEES, Pursuant to a Decision and Order of the National Labor Relations Board, as enforced by a decree of the United States Circuit Court of Appeals, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:"

NATIONAL LABOR RELATIONS BOARD
By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C.,
this 18th day of November 1946.

PRINTER'S NOTE:

Appendix A to the foregoing Answer is the same as that attached to the Intermediate Report of the Trial Examiner (page 842, *supra*) and is here omitted.

DESIGNATION OF RECORD TO BE PRINTED.

(Filed November 27, 1946.)

To: JOHN W. MENZIES, ESQ. CLERK:

Petitioner on Review respectfully requests that you cause to be printed the entire transcript of record herein, without any omissions.

LECKIE MCCREARY SCHLITZ & HINSLEA,
1970 Union Commerce Building,
Cleveland 14, Ohio,
MAin 1117,
Attorneys for Petitioner on Review.

LEE C. HINSLEA,
LUCIAN Y. RAY,
Of Counsel.

TRANSCRIPT OF PROCEEDINGS
IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED

November 29, 1949

Before ALLEN, MCALLISTER, and MILLER, *Circuit Judges.*

This cause is argued by Nathan L. Miller for petitioner and by Robert L. Stern for respondent and is submitted to the court.

DECREE Entered February 17, 1950.

On petition to review decision and order of the National Labor Relations Board.

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On Consideration Whereof, It is now ordered, adjudged and decreed by this Court that the petition of the National Labor Relations Board for enforcement be and the same is denied.

OPINION

Filed February 17, 1950

No. 10372

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

THE PITTSBURGH STEAMSHIP COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

Petition to Review Decision and Order of the National Labor Relations Board.

Decided February 17, 1950

Before ALLEN, MCALLISTER and MILLER, *Circuit Judges.*

ALLEN, Circuit Judge. This case is before the court on remand from the Supreme Court which reversed a judgment of this court [167 Fed. (2d) 126] denying enforcement of an order of the National Labor Relations Board based upon unfair labor charges. The Supreme Court remanded the case to this court for consideration of the applicability and possible effect both upon Board procedures and the scope of judicial review of Board orders of the Administrative Procedure Act, 60 Stat. 237, 5 U. S. C. § 1001 *et seq.*, and the Taft-Hartley Act, 61 Stat. 136, 29 U. S. C. Supp. I, § 141 *et seq.*, enacted between issuance of the Board's order and this court's decision.

The applicable provisions of the Administrative Procedure Act are contained in § 1006 (c), 1009 (a), (c) and (e). They relate to evidence and judicial review. The relevant sections of the Taft-Hartley Act are contained in § 158 (c), 160 (b), (c) and (e). They relate not only to rules of evidence and procedure in the trial of labor cases and review in this court, but also to the expression of opinion and to the reinstatement and payment of back pay to employees suspended or discharged.

Both of these statutes are remedial. *Republic Steel Corp.* v. *National Labor Relations Board,* 311 U. S. 7, 10. A remedial provision is applicable to pending actions. *Ex Parte Collett,* 337 U. S. 55. In accordance with this rule since the decision of the Board preceded the enactment and the review was subsequent to the enactment, the Administrative Procedure Act and the Taft-Hartley Act were applicable to the judicial review.

The Board concedes that the review in this court is controlled by the two statutes, but contends that the scope of judicial review as to

findings of fact has in no way been affected by them. We think this contention is erroneous. The provisions of § 10 (e) of the Administrative Procedure Act that the reviewing court shall hold unlawful and set aside agency action, findings and conclusions found to be "unsupported by substantial evidence" and that in making this determination the court shall "review the whole record," is new. Moreover, the rules concerning evidence have been expressly changed by both the Taft-Hartley Act and the Administrative Procedure Act. Section 10 (b) of the Wagner Act provided that "rules of evidence prevailing in courts of law or equity shall not be controlling," and the Board's findings of fact were made conclusive by that statute [§ 10 (e)] if they were "supported by evidence." In the Taft-Hartley Act [§ 10 (b)] Congress eliminated this language and substituted a provision that hearings "shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States." Section 10 (c) of the Wagner Act was amended to require decisions of the Board to be supported by "the preponderance of the testimony taken," and § 10 (f) was amended to provide that the findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

Section 7 (c) of the Administrative Procedure Act is new and emphatic. It provides as follows:

> ". . . Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. . . ."

These statutes were designed to eliminate the wholesale use of hearsay, the drawing of expert inferences not based upon evidence, and the consideration of only one part or one side of the case.

Moreover, § 10 (c) of the Taft-Hartley Act contains the specific provision that no order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay if such individual was suspended or discharged for cause. Section 8 (c) added:

> "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

Sections 8(c) and 10 (c) cover facts such as those revealed in this case, for the Board ordered reinstatement with back pay of Howard Shartle, who had been discharged for cause, and also held that the expression of views in the Ferbert letters was evidence of an unfair labor practice, although these letters contain no threat of reprisal or force or promise of benefit.

The conclusion that the Administrative Procedure Act and the Taft-Hartley Act were intended to effect a change in procedure before the Board and to create more effective judicial review is inescapable in light of the legislative history. Thus both the Senate Committee Report and the House Committee Report on the Administrative Procedure Act contained the following language:

> "The requirement of review upon 'the whole record' means that courts may not look only to the case presented by one party, since other evidence may weaken or even indisputably destroy that case." (Senate Document No. 248, 79 Cong. 2d Sess.)

In the Taft-Hartley Act (80th Cong.), similar provisions were adopted applying exclusively to Labor Board decisions. These have been summarized above, and they were explained in the Report of the Conference Committee Managers, No. 510, p. 53.[1]

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[1] "(6) The House bill provided, in section 10 (b), that proceedings before the Board should be conducted, so far as practicable, in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure. The Senate amendment retained the language of the present act, which provides that the rules of evidence prevailing in the courts shall not be controlling. The reason for this provision in the House bill was explained in full in the committee report on the bill. If the Board is required, so far as practicable, to act only on legal evidence, the substitution, for example, of assumed 'expertness' for evidence will no longer be possible. The conference agreement in section 10 (c) contains this provision of the House bill.

"(7) In section 10 (c) the House bill provided that the Board should base its decisions upon the 'weight of the evidence.' The Senate amendment retained the present language of the act, permitting the Board to rest its orders upon 'all the testimony taken.' The conference agreement provides that the Board shall act only on the 'preponderance' of the testimony—that is to say, on the weight of the credible evidence. Making the 'preponderance' test a statutory requirement will, it is believed, have important effects. For example, evidence could not be considered as meeting the 'preponderance' test merely by the drawing of 'expert' inferences therefrom, where it would not meet that test otherwise. Again, the Board's decisions should show on their face that the statutory

With reference to the right of free speech the legislative history shows that the amendment embodied in § 8 (c) of the Taft-Hartley Act was specifically intended to prevent the Board from using

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requirement has been met—they should indicate an actual weighing of the evidence, setting forth the reasons for believing this evidence and disbelieving that, for according greater weight to this testimony than to that, for drawing this inference rather than that. Immeasurably increased respect for decisions of the Board should result from this provision."

"(14) Under the language of section 10 (e) of the present act, findings of the Board, upon court review of Board orders, are conclusive 'if supported by evidence.' By reason of this language, the courts have, as one has put it, in effect 'abdicated' to the Board [*N. L. R. B.* v. *Standard Oil Company*, 138 Fed. (2d) 885 (1943)]. See also: *Wilson & Co.* v. *N. L. R. B.* [126 Fed. (2d) 114 (1942)], *N. L. R. B.* v. *Columbia Products Corp.* [141 Fed. (2d) 687 (1944)], *N. L. R. B.* v. *Union Pacific Stages, Inc.*, [99 Fed. (2d) 153]. In many instances deference on the part of the courts to specialized knowledge that is supposed to inhere in administrative agencies has led the courts to acquiesce in decisions of the Board, even when the findings concerned mixed issues of law and of fact (*N. L. R. B.* v. *Hearst Publications, Inc.*, 322 U. S. 111; *N. L. R. B.* v. *Packard Motor Car Co.*, decided March 10, 1947), or when they rested only on inferences that were not, in turn, supported by facts in the record (*Republic Aviation* v. *N. L. R. B.*, 324 U. S. 793; *Le Tourneau Company* v. *N. L. R. B.*, 324 U. S. 793).

"As previously stated in the discussion of amendments to section 10 (b) and section 10 (c), by reason of the new language concerning the rules of evidence and the preponderance of the evidence, presumed expertness on the part of the Board in its field can no longer be a factor in the Board's decisions. While the Administrative Procedure Act is generally regarded as having intended to require the courts to examine decisions of administrative agencies far more critically than has been their practice in the past, by reason of a conflict of opinion as to whether it actually does so, a conflict that the courts have not resolved, there was included, both in the House bill and the Senate amendment, language making it clear that the act gives to the courts a real power of review.

* * * * * *

"The Senate amendment provided that the Board's findings with respect to questions of fact should be conclusive if supported by substantial evidence on the record considered as a whole. The provisions of section 10 (b) of the conference agreement insure the Board's receiving only legal evidence, and section 10 (c) insures its deciding in accordance with the preponderance of the evidence.

unrelated non-coercive expressions of opinion on union matters as evidence of a general course of unfair labor conduct.[2]

These two statutory requirements in and of themselves give rise to questions of law which the courts will hereafter be called upon to determine—whether the requirements have been met. This, in conjunction with the language of the Senate amendment with respect to the Board's findings of fact—language which the conference agreement adopts—will very materially broaden the scope of the courts' reviewing power. This is not to say that the courts will be required to decide any case de novo, themselves weighing the evidence, but they will be under a duty to see that the Board observes the provisions of the earlier sections, that it does not infer facts that are not supported by evidence or that are not consistent with evidence in the record and that it does not concentrate on one element of proof to the exclusion of others without adequate explanation of its reasons for disregarding or discrediting the evidence that is in conflict with its findings. The language also precludes the substitution of expertness for evidence in making decisions. It is believed that the provisions of the conference agreement relating to the court's reviewing power will be adequate to preclude such decisions as those in *N. L. R. B.* v. *Nevada Consol. Copper Corp.* (316 U.S. 105) and in the *Wilson, Columbia Products, Union Pacific Stages, Hearst, Republic Aviation, and Le Tourneau*, etc., cases, *supra*, without unduly burdening the courts. The conference agreement therefore carries the language of the Senate amendment into section 10 (e) of the amended act."

[2] Senate Report No. 105, page 23:

"Section 8 (c): Another amendment to this section would insure both to employers and labor organizations full freedom to express their views to employees on labor matters [provided employers and unions refrain from threats of violence, intimation of economic reprisal, or offers of benefits]. The Supreme Court in *Thomas* v. *Collins* (323 U. S. 516) held, contrary to some earlier decisions of the Labor Board, that the Constitution guarantees freedom of speech on either side in labor controversies and approved the doctrine of the *American Tube Bending case* [134 Fed. (2d) 993]. The Board has placed a limited construction upon these decisions by holding such speeches by employers to be coercive if the employer was found guilty of some other unfair labor practice, even though severable or unrelated (*Monumental Life Insurance*, 69 N. L. R. B. 247) or if the speech was made in the plant on working time (*Clark Brothers*, 70 N. L. R. B. 60). The committee believes these decisions to be too restrictive and in this section, provides that if, under all the circumstances, there is neither an expressed or implied threat of reprisal, force, or offer of benefit,

The intent clearly to establish the right of free speech was further emphasized in House Conference Report No. 510, page 45. [3]

The Board concedes that § 8 (c) of the Taft-Hartley Act as to freedom of speech has immediate effect in this case, for it agrees that the Ferbert letters have been "immunized" by this provision and that no order of the Board could restrain the use in the future of such statements as the Ferbert letters. It makes this concession on the ground that the reviewing court can not restrain action which, under the 1947 Act, is no longer illegal. This means that the letters can not be considered to constitute unfair labor practice.

Certain courts of appeals for which we have high respect have held that the Labor Management Relations Act has not changed

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the Board shall not predicate any finding of unfair labor practice upon the statement. The Board, of course, will not be precluded from considering such statements as evidence."

House Report No. 245, page 33:

"Section 8 (d) (1) . . . Although the Labor Board says it does not limit free speech, its decisions show that it uses against people what the Constitution says they can say freely. Thus, if an employer criticizes a union, and later a foreman discharges a union official for gross misconduct the Board may say that the official's misconduct warranted his being discharged, but 'infer,' from what the employer said, perhaps long before, that the discharge was for union activity, and reinstate the official with back pay. It has similarly abused the right of free speech in abolishing and penalizing unions of which it disapproved but which workers wished as their bargaining agents. The bill corrects this, providing that nothing that anyone says shall constitute or be evidence of an unfair labor practice unless it, by its own express terms, threatens force or economic reprisal. This means that a statement may not be used against the person making it unless it, standing alone, is unfair within the express terms of sections 7 and 8 of the amended act."

[3] "Both the House bill and the Senate amendment contained provisions designed to protect the right of both employers and labor organizations to free speech. . . . The practice which the Board has had in the past of using speeches and publications of employers concerning labor organizations and collective bargaining arrangements as evidence, no matter how irrelevant or immaterial that some later act of the employer had an illegal purpose gave rise to the necessity for this change in the law. The purpose is to protect the right of free speech when what the employer says or writes is not of a threatening nature or does not promise a prohibited favorable discrimination."

the scope of Judicial review. Cf. *Eastern Coal Corp.* v. *National Labor Relations Board*, 176 Fed. (2d) 131 (C. A. 4); *Victor Mfg. & Gasket Co.* v. *National Labor Relations Board*, 174 Fed. (2d) 867 (C. A. 7); *National Labor Relations Board* v. *Continental Oil Co.*, decided January 6, 1950 (C. A. 10); *National Labor Relations Board* v. *Universal Camera Corp.*, decided January 10, 1950 (C. A. 2); *National Labor Relations Board* v. *Minnesota Mining & Mfg Co.*, decided January 16, 1950 (C. A. 8). *National Labor Relations Board* v. *Booker*, decided February 6, 1950 (C. A. 5). But these holdings are at variance with *National Labor Relations Board* v. *Caroline Mills, Inc.*, 167 Fed. (2d) 212, 213 (C. A. 5), and with *National Labor Relations Board* v. *Tappan Stove Co.*, 174 Fed. (2d) 1007, 1008, in which this court held that the Taft-Hartley Act broadened the Wagner Act as to scope of judicial review.

We adhere to the decision in *Labor Board* v. *Tappan Stove Co.*, and also point out that the case here presented is stronger in favor of the petitioner's contention than most of the cases relied on by the Board, which relate to the Taft-Hartley Act alone. If, as contended, Congress failed in the Taft-Hartley Act to enlarge the scope of judicial review because the requirement of substantial evidence to support the Board's findings added nothing in view of previous decisions of the Supreme Court, no such contention can be maintained with reference to the Administrative Procedure Act. In this statute the procedural requirements made by the Board and by the reviewing court not only are very specific but they add new tests to be applied to the validity of agency action. Every administrative agency is expressly prohibited from imposing any sanction and issuing any rule or order "except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence." The reviewing court is required [§ 10 (e)] to hold unlawful and set aside agency action, findings, and conclusions not in accordance with law and unsupported by substantial evidence, and in making its determination it is also required to review the whole record. These mandatory provisions define and make specific the requirements of judicial review and extend them beyond the requirements of the Wagner Act.

We assume that evidence admitted before the Board may be relied on to support its decision and also may be relied on by petitioner. Although not expressly directed, we also assume that we are expected, in light of the new enactments, to reconsider the record, for the Supreme Court will not ordinarily pass upon a case until a lower court has made findings upon the facts. *National Labor Relations Board* v. *Donnelly Garment Co.*, 330 U. S. 219, 237. When the Supreme Court remanded the instant case with the direc-

tion to consider the effect of these statutes, we think it did not expect us to pass upon that question *in vacuo*. Necessarily the effect of these statutes upon the case means their effect as applied to the facts of the case. We therefore proceed to inquire, upon a consideration of the whole record, whether the order sought to be enforced is supported by the reliable, probative, and substantial evidence and is in accordance with law.

The entire case is bottomed by the Board on what it finds to be the adoption by the petitioner of a general course of coercive conduct prior to the labor election of June, 1944, to which it had consented. The petitioner contends that no substantial evidence to this effect exists.

THE FERBERT LETTERS

The finding that a general course of coercive conduct existed is based largely upon the letters signed by petitioner's president, A. H. Ferbert, and sent to each of the petitioner's unlicensed employees. Petitioner had no previous record of labor trouble or union hostility. Cf. *National Labor Relations Board* v. *J. L. Brandeis & Sons*, 145 Fed. (2d) 556, 557 (C. A. 8); *Martel Mills Corp.* v. *National Labor Relations Board*, 114 Fed. (2d) 624 (C. A. 4). It is undisputed that petitioner addressed a letter to all of its supervisors calling attention to the coming election and instructing them to display complete impartiality with reference to union affairs. It is undisputed, and the examiner found that petitioner addressed to every one of the 2,000 unlicensed employees two letters (the Ferbert letters), one dated May 2, 1944, and one June 1, 1944. The first letter stated that "The Company recognizes the right of each employe to join any Union he may select and such membership will not affect his position with the Company. On the other hand, the Company feels that it should be made clear to you that it is not necessary to join any labor organization if you do not so choose." The second letter made substantially the same statement, and also stated, "No one must threaten you in this election. It is your privilege to make up your own mind as to how you should vote."

The examiner found:

> "The suggestion that the employees' selection of the Union would result in a forfeiture by the employees of their opportunities for promotion represented a misstatement of the Union's position in that respect. As shown by the uncontradicted and credited testimony of Jack Lawrenson, the Union's vice-president, it is the policy of the Union to allow promotions of qualified seamen under the circumstances indicated in the letter, and it is only an unfilled vacancy arising after any such promotion has been made that must be filled from

the rotary hiring list. Ferbert's statements concerning the wage stabilization laws, while not literally inaccurate, nevertheless contained implications which were misleading. Their formulation was such as to convey the impression that collective bargaining would be fruitless since all wage increases had been banned by the governmental wage stabilization policy. Actually, of course, the fact that wages generally were frozen during the war period did not preclude wage adjustments under certain circumstances. Moreover, the letters gave an erroneous impression that collective bargaining was limited to the question of wages, ignoring other conditions of employment in which collective bargaining can be a factor, such as working rules and the adjustment of grievances."

Upon this ground the examiner found that the letters formed an integral part of a general course of coercive conduct.

These findings, which were approved by the Board, in important particulars are supported by no evidence. The assertion that the letters give an erroneous impression that collective bargaining is limited to the question of wages can not be maintained in view of the express statement in the letter dated May 2, 1944. In calling attention of the employees to the election, the first Ferbert letter states that the question to be decided is whether the unlicensed employees are to have for their exclusive bargaining agent the N. M. U. (C. I. O.) "with the sole and exclusive right to represent you in all matters regarding rates of pay, wages, hours of employment, and other conditions of employment."

The statement in the letter of May 2, 1944, with reference to the question of wage rates being in the hands of the Government during the war emergency was true. The statement in the letter of June 1, 1944, with reference to rotary hiring was true. In its pertinent portions it read:

"You should carefully consider some of the issues which have been referred to by the Union . . . one is 'rotary hiring.' To make sure that you understand what this means. . . . it means that you are entitled to return to the same ship in the spring that you laid up the previous fall, but if you are following an engineer or mate, and want to work with him, and he is promoted, he cannot hire you. This is called 'fleet seniority.' Again, if you ship out as a deckwatch, you cannot be promoted to a watchman or lookout when there is a vacancy. The vacancy must be filled by the man at the top of the list at the Union Hall. If you do not go back to the same ship in the spring, you register at the Union Hall and work your way up to the top of the list, and take the first opening for the position you are seeking, whether it be in our fleet or some other

fleet. If you refuse the position, then you go to the bottom of the list."

While the union official, Lawrenson, testified positively that this was "a downright misstatement," Lawrenson's conclusion is not supported by reliable, probative, and substantial evidence. The letter is shown to be squarely correct by the written union contract, which provides that replacements "shall be hired through the offices of the Union, as vacancies occur." Lawrenson's testimony so far from being uncontradicted, as found by the examiner, was contradicted not only by the written union contract, but by Lawrenson himself. The examiner found: ". . . it is the policy of the Union to allow promotions of qualified seamen under the circumstances indicated in the letter." Lawrenson's testimony contradicts this finding. He was asked whether a wheelsman on the Steamer F. B. Morse, who wanted to shift to the Steamer A. B. Widener to follow a mate who had been promoted, could do that under the union system. Lawrenson answered: "We have no provision, because we never came across those situations. We have no provisions in the shipping rules that if a man wants to follow a certain mate he may do so." He then went on to say that it might be arranged if the man at the top of the list was willing. He was further questioned as follows:

> "Q. . . . You say you are quite sure that might be arranged. But that isn't the rule, is it, if there is a vacancy, and the man on the Morse, who is not on your list wants to go to the Widener, because the mate is there, you couldn't let him go there because that would deprive the top man on your list from having a job; wouldn't it? A. It would not, because there is a vacancy——
>
> "Q. Now, if the top man on the list wanted the Widener job, and not the Morse, you would give him the Widener job; wouldn't you? A. Definitely."

Three witnesses testified, and no positive testimony to the contrary appears, that at the meeting of its captains and chief engineers in Cleveland in March, 1944, just before the opening of navigation, the petitioner unequivocally instructed its officers that they must maintain strict impartiality and not interfere with union activities as long as such activities did not conflict with discipline or proper operation. In a letter addressed to the captains on May 31, the captains were instructed that "There must be no partiality." The examiner concluded that the fact that instructions were given to the supervisors to insure a fair election did not absolve petitioner of liability since the instructions "were never communicated to the employees," and this conclusion was upheld by the Board. This was error as a matter of law. Through individual letters the com-

pany instructed the men positively as to their rights. It was under no obligation to send the men copies of its instructions to the masters. When the company wrote the men, "It is your privilege to make up your own mind as to how you should vote," and "No one must threaten you in this election," it fully communicated its attitude, and in effect offered its protection.

Moreover, the instructions were acted upon. We have here a case involving 73 ships with 2,000 unlicensed employees and 596 supervisors. Complaint is made as to occurrences on only seven ships. The seven principal witnesses who attack petitioner's conduct on these ships are all union organizers, certainly not disinterested witnesses. Only four unlicensed men, nonorganizers, appeared for the Board as supporting witnesses. No complaint whatever has been made as to some 540 supervisors on 66 ships.

The Board contends that these facts are immaterial. While coercive acts actually performed even on one ship would render the employer liable on this record, the background is significant in favor of the employer. Not only is there a total failure to bring home to the management knowledge of the controversies on the few ships involved, but the positive acts of management establish absence of general coercive intent.

THE DISCHARGE OF SHARTLE.

We question whether the reinstatement of Shartle could properly be ordered even if the record supported the Board's order, in view of the enactment of § 10 (c) of the Taft-Hartley Act (Cf. *Vandenbark* v. *Owens-Illinois Glass Co.*, 311 U. S. 538); but we deem it unnecessary to base our holding upon this ground, for we search the record in vain for "reliable, probative, and substantial evidence" [5 U. S. C. § 1006 (c)] to support the finding that Shartle was discharged because of union activities.

In contemplation of the election, permission was given for the presence of a union organizer upon each of the 73 ships. Out of some 2,000 men, Shartle is the only organizer found to have been discharged because of union activities.[4] He was employed from March 31 to April 24, 1944, when he was discharged on the ground of incompetency by the first mate, Dobson, the executive officer of the Steamer Irving S. Olds. Shartle possessed an A. B. certificate and was hired as a watchman. In this position he had various duties. He was to keep watch, to supervise small groups of deck hands in carrying out the orders of the first mate and also of the second and third mates who were usually in immediate charge of

[4] Vogel was found to have been discharged, but the discharge, as the examiner found, "was rescinded."

the operations. He was to handle the electric winches which control the speed of the ship in stopping to load and unload. He was personally required to supervise and to do a large amount of painting. He was discharged because he was incompetent in all these respects and also because he was late on various occasions and did not notify his superior officers. The incompetency with reference to the winch was important because of the possibility that men upon the deck would be injured if the lever were carelessly left on the automatic control. While the examiner comments that no one had ever been discharged for such a fault it was uncontradicted that another man had been demoted for negligence in this particular on a single occasion, with loss of $45 per month pay. Shartle denied that he had been negligent in the operation of the winch, although Chrobak, the second mate, testified that on one occasion he took over the controls just in time to prevent the breaking of the wire and possible injury. In spite of Shartle's categorical denial of this incident, the examiner found that it had occurred.

Shartle admitted that he did not know how to splice cable, and that on one occasion, after splicing had been assigned to him, it was taken away and given to another man to finish. The examiner found that the "isolated mistake in the operation of the winch" and Shartle's "unfamiliarity with the splicing technique, of rarely required application" did reflect "a certain lack of experience and skill." The examiner also said that it might even be assumed that in certain other respects, such as his ability to paint or his ability to lead the deck hands Shartle may have fallen short of the degree of skill and know-how possessed by old-line seamen. This was a mild description of the testimony with reference to Shartle's incompetence. The second mate said in effect that Shartle was lazy, "his partner would do three-fourths of the work." He said he reprimanded Shartle for this and, instead of improving, Shartle "razzed" the other men for going so fast, and asked them if they were doing piecework. The second mate reported this to Dodson, who said that he would let it run awhile and see how things "panned out." Dobson testified that Shartle reported late for duty twice; that he went to Cleveland without consulting the first mate, and he would come back half an hour to forty-five minutes late in the morning and say nothing to any one.

The examiner found Shartle negligent in the operation of the winch, but minimized it as being an isolated incident. However, the record clearly shows this was not a single incident. Hewer, the third mate, said that on a number of occasions both before and after this incident he "took the controls from Shartle" because he "didn't figure he was competent to handle them." Moreover, Hewer testified that Shartle was not trustworthy as a watchman. He reprimanded Shartle for his poor painting and advised him to

do a better job and supervise the men more closely. The examiner questioned the discharge on the ground that the first mate did not consult the other mates before discharging Shartle. Such consultation was not necessary for the first mate exclusively had the power to discharge men; but this finding is incorrect because it is undisputed that Dobson asked Hewer, the third mate, shortly before the discharge, how Shartle had been getting along with his work, and Hewer replied that the work could be improved in a number of ways.

We bear in mind that Shartle denied all of these delinquencies, but he also denied the incident of the winch, which was found by the examiner to have taken place. In face of this denial, it is difficult to understand how Shartle's other testimony could be considered entirely credible, especially when it was contradicted by several witnesses.

Since the examiner considered that the incompetence shown was unsubstantial, he concluded that Shartle was discharged for union activity. It is undenied that neither the first mate nor the captain mentioned the union to Shartle at the time of his discharge. Also there is not a shred of testimony with reference to coercion or restraint of Shartle, who does not claim that he was in any way hindered in his organizing.

Certain wholly incompetent testimony was admitted to the effect that Shartle was discharged because of union activity.[5] After his discharge Shartle talked to the men on the ship, the electricians, the firemen, the oilers, the coalpassers, the steward, the second cook, the porter, the deck hands, the deck watch, and the watchmen, and asked them whether he was competent. He said they assured him that he was, and that he was discharged for union activity. Reading the case in the light of the whole record, we conclude that Shartle was discharged for cause and that the finding that he was discharged because of union activity is not supported by reliable, substantial, and probative evidence. Cf. *National Labor Relations Board* v. *Riverside Mfg. Co.*, 119 Fed.(2d) 302, 307 (C. A. 5).

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[5] Hearsay testimony was repeatedly admitted by the examiner over objection, and was made the basis of important findings. Hearsay testimony to the effect that Captain Wallace intended to discharge George W. Anderson because he was a union man was detailed at length in the intermediate report. Anderson was never discharged. The examiner also relied on hearsay testimony to the effect that Zyp, an employee of petitioner without authority to discharge men had recommended to Captain Brinker the discharge of Lee. Lee was not discharged.

Based on the record in its complete setting, the other incidents held to constitute a general course of coercive action are at their worst sporadic cases of individual anti-union bias on the part of certain licensed employees. When viewed on the record as a whole, they are cases not of coercion but of mutual tension between aggressive organizers and the officials dealing with them. It is undenied that the tension was created or largely contributed to by the organizers themselves. Thus Lee, who objected to profane expressions of his captain, admitted that both he and the captain used profane words. The disturbance in these isolated instances can not rightly be ascribed to a policy emanating from management which was not shown by this record to be acquainted with any one of the incidents so heavily relied on by the Board.

Not one of the three principal union organizers, Lee, Babin and Weissflog, claims to have been prevented from engaging in union activities. Under the general course of conduct in fact adopted by the employer these men were allowed, as were the organizers on all of the 73 ships, to engage in a ten-weeks' intensive campaign on board ship, to use the bulletin boards, to deliver literature, and actively to talk unionism to the men. None of the three was threatened with discharge. They contend that their activities were unduly limited; but each of them admits being reprimanded on the ground that he had carried his organizing into a forbidden part of the ship or to excessive limits. Weissflog says that he was told not to organize in the mess hall and in the firemen's quarters. Lee says that his captain severely reprimanded him for driving men off the ship by his importunities. The examiner finds that a seaman who corroborated the captain's testimony that Lee had been driving men from the ship "admitted that Lee had not in fact bothered him." But this finding was exactly contrary to the testimony.[6]

Lee admitted baiting the captain in arguments, and while he denounced the captain's language, he admitted using profane language himself. Babin said that he was censured for bothering the men when working, and was ordered by the chief engineer to stay out of the engine room and the firemen's quarters. He said that he went into the engine room because it was his duty to mark the soundings and to tell the engineers when to pump. Both the chief engineer and the captain said that the sounding board is

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[6] "Trial Examiner Leff: You said Lee was bothering you?

"The Witness: He was at our heels all the time. He said, 'This is your last chance to get in the union and after they get control of the lakes we would be out.' I said I didn't care if I was out or not. He was bothering us all the time. We just quit when we went up the ladder. Fights make it tough for the next watch."

not in the engine room, but in the fantail. Orders as to pumping were given by the master or made by telephone. On the whole record it is incredible that this was not the case on a modern ship. The abuse seems to have been mutual between organizers and officers, and in any case mere name-calling, particularly when engaged in on both sides, does not amount to a violation of the statute.

The examiner disbelieved the testimony of the captains as to the restrictions imposed for the reason that rules as to where the organizers could carry on their work were not promulgated by the company. It is undisputed that instructions had been given to the masters to permit organizing to be carried on as long as it did not interfere with discipline or proper operation. It was impossible for a home office to police 73 ships out on the Great Lakes and to frame rules which would take care of every situation. The employer's instruction was reasonable and required the captains to frame and enforce the proper rules. On the whole record the restrictions were justifiable. In any case they were made and the controversies complained of took place without evidence of the slightest knowledge on the part of petitioner's management. The case is thus wholly differentiated from *H. J. Heinz Co.* v. *National Labor Relations Board,* 311 U. S. 514. There is no evidence that the supervisors who engaged in controversy represented the company in what they said about the union. In fact there is cogent evidence to the contrary in all the proven acts of the management. Cf. *National Labor Relations Board* v. *Sparks-Withington Co.,* 119 Fed. (2d) 78 (C. A. 6).

We think that to ignore the complete absence of union trouble on 66 ships where the positive instructions were that the rights of the men should be protected and where the basis of the holding against the employer is that it engaged in a general course of anti-union conduct, is to ignore the mandate of the two statutes that decision shall be based upon "the record considered as a whole."

The decree of enforcement is denied.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

I, J. W. Menzies, Clerk of the United States Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of The Pittsburgh Steamship Company,

vs.

National Labor Relations Board, No. 10,372, as the same remains upon the files and records of said United States Court of Appeals for the Sixth Circuit, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 24th day of February, A. D. 1950.

[SEAL]

J. W. MENZIES,
Clerk of the United States Court of Appeals for the Sixth Circuit.

By: CARL W. REUSS
Chief Deputy Clerk

In the Supreme Court of the United States

Order allowing certiorari filed May 8, 1950.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE : 1950 O - 884476

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In the Supreme Court of the United States

OCTOBER TERM, ~~1949~~ 1950

No. —42

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE PITTSBURGH STEAMSHIP COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered on February 17, 1950 (R. 868), denying enforcement of an order issued by the Board against The Pittsburgh Steamship Company (R. 856-857).

OPINIONS BELOW

The opinion of the Court of Appeals (R. 870), is not yet reported. The original opinion of the Court of Appeals is reported in 167 F. 2d 126. The

opinion of this Court reversing and remanding the case for further proceedings is reported in 337 U. S. 656. The findings of fact, conclusions of law and order of the National Labor Relations Board (R. 854-857) are reported in 69 NLRB 1395.

JURISDICTION

The judgment of the Court of Appeals was entered on February 17, 1950 (R. 868). The jurisdiction of this Court is invoked under Section 1254 of 28 U. S. C., as codified June 25, 1948, and Section 10 (e) and (f) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

The principal question presented is whether the scope of judicial review of findings of fact made by the National Labor Relations Board has been changed by the Administrative Procedure Act or the Labor Management Relations Act.[1] A second question is whether procedural changes made by the Administrative Procedure Act and the Labor Management Relations Act which govern admissibility of evidence in proceedings before the Board and the standards to be applied by the Board in making decisions, apply to hearings concluded and

[1] Assuming that this question is answered in the affirmative, additional questions presented are whether the scope of judicial review is so "broadened" as to permit a court to substitute its own findings and inferences for the reasonable findings and inferences of the Board, and whether the Board's findings are supported by substantial evidence on the record considered as a whole.

decisions made by the Board prior to the effective date of these statutes.

STATUTES INVOLVED

The statutory provisions principally involved are the National Labor Relations Act of 1935 (49 Stat. 449, 29 U. S. C. 151), Sections 7, 8, 10(c); the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C. Supp. II, Sections 141, *et seq.*), Sections 8(a), (c), 10(b), (c), (e), and Section 104; and the Administrative Procedure Act (60 Stat. 237, 5 U. S. C. Section 1001, *et seq.*), Sections 7(c) and 10(e). It does not seem necessary to quote these various provisions for purposes of this petition.

STATEMENT

When this case was previously before this Court the facts were fully set forth in the Board's brief, No. 258, October Term, 1948, pp. 2-33. On June 20, 1949, this Court issued its opinion reversing and remanding the cause to the Court of Appeals for the Sixth Circuit for further proceedings not inconsistent with its opinion. 337 U. S. 656. This Court at that time stated that "Without doubting the existence here of evidence substantial enough under the Wagner Act * * * to warrant the Board's findings, we are not certain whether that standard controls this case." 337 U. S., at 661. Accordingly this Court held that the questions of whether the Administrative Procedure Act and the Taft-Hart-

ley Act "are applicable to and, if applicable, in any way affect Board procedures and the scope of judicial review of Board orders" (337 U. S., at 661) should "be considered in the first instance by the Court of Appeals." 337 U. S., at 662.

The Court of Appeals on February 17, 1950, handed down its opinion and decree again denying enforcement of the Board's order (R. 868-884). The court held that the Taft-Hartley Act and the Administrative Procedure Act were applicable to review of the instant case and that each of these Acts broadened the scope of judicial review beyond the requirements of the Wagner Act. The court further held that Sections 8 (c), 10 (b), and 10 (c) of the Taft-Hartley Act, as well as Section 7 (c) of the Administrative Procedure Act, which deal not with scope of judicial review, but with agency procedure, are applicable to the proceedings and decision of the Board in this case, although the Board's decision preceded enactment of these statutes. Applying the "broadened" scope of review and revised evidentiary and procedural standards, the court held that the Board's findings of fact were not supported by "reliable, substantial and probative evidence".

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the Taft-Hartley Act and the Administrative Procedure Act have changed the

scope of judicial review of orders of the National Labor Relations Board.

2. In holding that the procedural changes made by Sections 8 (c), 10 (b), and 10 (c) of the Taft-Hartley Act, and Section 7 (c) of the Administrative Procedure Act are applicable to Board proceedings and decisions made prior to the effective date of these statutes.

3. In substituting for the Board's findings concerning the credibility of witnesses, weight of evidence and inferences therefrom, contrary findings of its own.

4. In holding that the Board's findings are not supported by substantial evidence on the record considered as a whole.

5. In seemingly holding that the company could not be charged with responsibility for the acts of officers on seven out of 73 ships unless that conduct could be traced to a policy of the central management.

6. In not enforcing the order of the Board.

REASONS FOR GRANTING THE WRIT

As has been pointed out, when this case was before the Court last Term, this Court said: "Without doubting the existence here of evidence substantial enough under the Wagner Act, *Consolidated Edison Co.* v. *Labor Board*, 305 U. S. 197, 229, to warrant the Board's findings, we are not certain whether that standard controls this case." (337

U. S., at 661). As we read the opinion, the Court thereby passed upon and sustained the Board's contention that the evidence, tested by the substantial evidence rule as theretofore understood, was sufficient to support the Board's findings, and that those findings warranted the conclusion that the Company had committed unfair labor practices. This interpretation seems particularly valid in view of the fact that Mr. Justice Jackson alone reserved "opinion as to the sufficiency of the evidence under the Wagner Act in view of the Court's determination to return the case to the Court of Appeals." 337 U. S., at p. 662.

The court below held that it was not bound to enforce the Board's order because (1) the scope of review had been so broadened by the subsequent legislation as to permit the courts to set aside an order when the evidence would have been sufficient under Wagner Act standards of review; and (2) the Board's proceedings were vitiated by subsequent procedural amendments, although the proceedings were completed prior to the effective date of the amendments.

In both respects, the decision below was both erroneous and in conflict with decisions of many other courts of appeals.

1. Section 10(e) of the Labor Management Relations Act provides that—

> The findings of the Board with respect to questions of fact if supported by substantial evi-

dence on the record considered as a whole shall be conclusive.

As the court below admitted, its holding that the scope of judicial review under this provision of the Taft-Hartley Act is broader than under the Wagner Act (R. 875-876) is in conflict with decisions of the Second, Fourth, Fifth, Seventh, Eighth and Tenth Circuits. *National Labor Relations Board* v. *Universal Camera Corp.*, decided January 10, 1950 (C. A. 2); *Eastern Coal Corp* v. *National Labor Relations Board*, 176 F. 2d 131 (C. A. 4); *National Labor Relations Board* v. *Booker*, decided February 6, 1950 (C. A. 5); *Victor Mfg. & Gasket Co.* v. *National Labor Relations Board*, 174 F. 2d 867 (C. A. 7); *National Labor Relations Board* v. *Minnesota Mining & Mfg. Co.*, 179 F. 2d 323, 325-326 (C. A. 8); *National Labor Relations Board* v. *Continental Oil Co.*, 179 F. 2d 552, 555 (C. A. 10); see also *National Labor Relations Board* v. *Crompton-Highland Mills*, 337 U. S. 217, 220, n. 4. The decision of the court below that the Administrative Procedure Act had the effect of broadening the substantial evidence rule as theretofore applied under the Wagner Act and similar statutes is in conflict with decisions of the Fourth, Seventh, Eighth and Ninth Circuits. *National Labor Relations Board* v. *National Plastics Products Co.*, 175 F. 2d 755, 760 (C. A. 4); *Anderson* v. *Commissioner of Inter-*

nal Revenue, 164 F. 2d 870, 874 (C. A. 7); *National Labor Relations Board* v. *Minnesota Mining & Mfg. Co.,* 179 F. 2d 323 (C. A. 8); *Willapoint Oysters* v. *Ewing,* 174 F. 2d 676, 685 (C. A. 9), certiorari denied, 338 U. S. 860.

2. In holding that the Board erred in relying upon the Ferbert letters as evidence of unfair labor practices because they contained no direct threat or promise of benefit, and in relying upon evidence allegedly incompetent under the revised standards of the Taft-Hartley and Administrative Procedure Acts, the court below gave retroactive effect to procedural amendments.[2] Its holding in this respect conflicts in principle with decisions of the Second, Third, Fifth and Eighth Circuits. *National Labor Relations Board* v. *National Garment Co.,* 166 F. 2d 233, 236-238 (C. A. 8), certiorari denied, 334 U. S. 845; *National Labor Relations Board* v. *Clark,* 176 F. 2d 341, 343 (C. A. 3); *National Labor Relations Board* v. *Whittenberg,* 165 F. 2d 102, 104 (C. A. 5); *National Labor Relations Board* v. *Gate City Cotton Mills,* 167 F. 2d 647, 649 (C. A. 5); *National Labor Relations Board* v. *Sandy Hill Iron & Brass Works,* 165 F. 2d 660, 662 (C. A. 2); *National Labor Relations Board* v. *Brozen,* 166 F. 2d 812, 813 (C. A. 2). In the *National Garment* case, the

[2] Compare Section 12 of the Administrative Procedure Act which provides in part "* * * no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement."

court stated (166 F. 2d, at 238): "Insofar as Congress amended certain procedural provisions of the Act it reflected no intention to reach back and nullify procedural steps already taken. Those steps already taken, pleadings, and all things done under the old law must stand. Procedural changes operate in the future."

These cases apply the general rule (1 Sutherland, *Statutory Construction* (3rd Ed., 1943) 438, 2 *id.* 136) that, unless the legislature has expressed a contrary policy procedural changes will be deemed to affect pending cases only to the extent that the steps dealt with in the amendments have not yet been taken. For otherwise, "the effect is to reach backward, and nullify by relation the things already done." *Berkovitz* v. *Arbib & Houlberg, Inc.*, 230 N. Y. 261, 270, 130 N. E. 288, 290. Departure from this rule by the court below in the instant case has resulted in setting aside an order of the Board which, when made, fully conformed to the then existing procedural standards governing admissibility of evidence and the administrative decisional process.

3. The questions which the court below has thus answered differently than the other courts of appeals are of manifest importance in the administration of the Act, and, in so far as the Administrative Procedure Act is concerned, in the field of federal administrative law generally.

4. We believe that in holding that the scope of judicial review has been materially broadened the court below erred, for reasons set forth in the opinions cited on p. 7. However, even assuming that a change in the scope of judicial review has been effected by the Taft-Hartley Act or the Administrative Procedure Act, we submit that that change has not gone to such lengths as to permit a court reviewing a Board order to substitute for the reasonable findings of the Board its own judgment concerning the credibility of witnesses, the weight of the evidence, and the inferences to be drawn therefrom. Tested by the standards of review provided in the Taft-Hartley Act and the Administrative Procedure Act, the evidence discussed in full in the Government's brief on the merits last Term, pp. 4-28, 70-103, amply supports the Board's findings. The Board's order should therefore have been enforced.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

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APRIL, 1950.

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United States Treasury Department, *Merchant Vessels of the United States, 1943* (Gov't. Print. Office), p. 51	110

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 42

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE PITTSBURGH STEAMSHIP COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

PRIOR OPINIONS

The opinion of the Court of Appeals (R. 870), is reported at 180 F. 2d 731. The original opinion of the Court of Appeals is reported at 167 F. 2d 126. The opinion of this Court reversing and remanding the case for further proceedings is reported at 337 U. S. 656. The findings of fact, conclusions of law and order of the National Labor Relations Board (R. 854–857) are reported in 69 NLRB 1395.

JURISDICTION

The judgment of the Court of Appeals was entered on February 17, 1950 (R. 868). The

petition for a writ of certiorari was granted on May 8, 1950. The jurisdiction of this Court is invoked under Section 1254 of 28 U. S. C., as codified June 25, 1948, and Section 10 (e) and (f) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Whether procedural and evidentiary provisions of the Administrative Procedure and Labor Management Relations Acts apply retroactively to administrative proceedings which (apart from judicial review) have been completed before those statutes became effective.

2. Whether the scope of judicial review of findings of fact made by the National Labor Relations Board has been enlarged by the Administrative Procedure and Labor Management Relations Acts.

3. Whether the Board's findings are supported by substantial evidence on the record considered as a whole. Aspects of this question are:

(a) Whether the court below erroneously substituted its judgment on the facts for that of the Board.

(b) Whether the court below improperly made its own determinations as to the credibility of witnesses in lieu of accepting the reasonable determinations made by the Board.

(c) Whether the Company is responsible for unfair labor practices committed by the chief officers on its ships.

(d) Whether the company can escape responsibility because the evidence related only to seven out of seventy-three ships.

(e) Whether the Board relied, improperly, upon incompetent or hearsay evidence.

STATUTES INVOLVED

The statutory provisions principally involved are the National Labor Relations Act of 1935 (49 Stat. 449, 29 U. S. C. 151), Sections 7, 8, 10 (b); the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C. Supp. II, 141, *et seq.*), Sections 8 (a), (c), 10 (b), (c), (e), and Section 104; and the Administrative Procedure Act (60 Stat. 237, 5 U. S. C. 1001, *et seq.*), Sections 7 (c) and 10 (e). The pertinent provisions are set forth in the Appendix, *infra,* pp. 145–152.

STATEMENT

On April 5, 1948 the court below first set aside the order of the National Labor Relations Board here involved on the ground that the Trial Examiner had credited all the Board's witnesses and was, therefore, biased and prejudiced. (167 F. 2d 126.) On June 20, 1949, this Court issued its opinion reversing and remanding the cause to the Court of Appeals for the Sixth Circuit for further proceedings not inconsistent with its opin-

ion. 337 U. S. 656. The Court, after "careful scrutiny of the record" decided that "the printed transcript suggests thoughtful and discriminating evaluation of the facts" (337 U. S. at 660), but that, "Without doubting the existence here of evidence substantial enough under the Wagner Act * * * to warrant the Board's findings, we are not certain whether that standard controls this case." 337 U. S., at 661. This Court held that the questions of whether the Administrative Procedure Act and the Taft-Hartley Act "are applicable to and, if applicable, in any way affect Board procedures and the scope of judicial review of Board orders" (337 U. S., at 661) should "be considered in the first instance by the Court of Appeals." 337 U. S., at 662.

The Court of Appeals on February 17, 1950, handed down its opinion and decree again denying enforcement of the Board's order (R. 868–884). The court held that the Taft-Hartley Act and the Administrative Procedure Act were applicable to review of the instant case and that each of these Acts broadened the scope of judicial review beyond the requirements of the Wagner Act. The court further held that Sections 8 (c), 10 (b), and 10 (c) of the Taft-Hartley Act, as well as Section 7 (c) of the Administrative Procedure Act, which deal not with scope of judicial review, but with agency procedure, are applicable to the proceedings and decision of the Board in this case, although the Board's decision preceded

enactment of these statutes. Applying the "broadened" scope of review and revised evidentiary and procedural standards, the court held that the Board's findings of fact were not supported by "reliable, substantial and probative evidence." Inasmuch as the decision below turns upon the facts of the case, a rather extensive statement of the facts is necessary.

I

THE FACTS

Upon the usual proceedings under Section 10 of the Act, the Board, after reviewing and considering the entire record in the case, the intermediate report of the Trial Examiner, the exceptions, briefs and argument, issued its decision and order on August 13, 1946 (R. 854–857), finding that The Pittsburgh Steamship Company, hereinafter called the Company, had violated Section 8 (1) and (3) of the Act. The following summary of the facts as found by the Board (R. 854–855, 801–839) shows the nature of the case and the more than substantial evidence supporting the findings.

A. THE COMPANY'S INTERFERENCE, RESTRAINT AND COERCION IN VIOLATION OF SECTION 8 (1) OF THE ACT

Prior to and during the March to November 1944 sailing season for the Company's freighters on the Great Lakes, the National Maritime Union, C. I. O., hereinafter called the Union, made an

intensive drive to organize the Company's unlicensed personnel (R. 801–802; 1–2, 13, 47, 124–125, 277, 533, 697).[1] To this end the Union designated a crew member on each of the Company's approximately seventy freighters to act as a volunteer organizer (R. 807; 13, 39, 140, 252, 533, 664). On November 8, 1943, it petitioned the Board to conduct an election to determine whether the unlicensed personnel desired the Union to represent them (R. 802; 274, 697, 760).

During the Union's organizational drive, and particularly prior to the election held by the Board in June 1944 (R. 802; 26–27, 127, 273–274, 761),[2] the Company, as the Board found, engaged in a course of conduct designed to "defeat the Union in the election, and, beyond that, to discourage and frustrate the organizational efforts of the Union" (R. 823–824). The Company's offensive against the Union was carried on by its licensed personnel, supervisory employees with authority to hire and discharge or effectively to recommend the discharge of the unlicensed personnel (R. 801–802; 13, 54, 85–86, 171, 213, 258, 261, 272, 275–276, 556–557).[3]

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[1] Wherever in a series of references semicolons appear, the references preceding the semicolons are to the Board's findings; those which follow are to the supporting evidence.

[2] The Union failed to receive a majority of the votes cast (R. 802; 27, 274, 761).

[3] The licensed personnel on each vessel consisted of the captain or master of the vessel, the chief engineer, three mates rated as "first," "second," and "third," and three assistant engineers who were similarly rated (R. 801; 13, 224–225).

1. THE DISCRIMINATORY AND ABUSIVE TREATMENT OF UNION LEADERS

Upon learning the identity of the organizers and other union members, the Company, on a number of the vessels, imposed restrictions upon their freedom of speech and movements which had never before been imposed upon any of the employees. It had been customary for members of the crew to talk freely to each other about any subject while at work as well as on their free time, and the Company had no rule forbidding such practice (R. 820; 318, 403).

On the *Morse,* shortly after Captain Gerlach learned that employee Weissflog was the ship's organizer, he approached Weissflog and warned him, "I know what you are here for. I will warn you * * * that while you are on watch and any of the other men are on watch, don't talk to them. When you are off watch and the other men are off watch you can do as you please" (R. 820; 308, 317–318, 604). Thereafter, upon finding Weissflog, during his regular lunch period, talking about the Union to other crew members in the messroom, which was used as a recreation place as well as a lunchroom, Captain Gerlach grabbed him and forcibly ejected him from the room stating that he did not want again to find Weissflog talking to crew members (R. 821; 60–62, 77, 324–325, 702–706). On another occasion when Captain Gerlach observed Weissflog talking to crew members in the firemen's quarters during his free time, Gerlach again physi-

cally ejected him from the room, stating that Weissflog had no reason to speak to the firemen, that he was going to stop Weissflog from speaking to anyone and that Weissflog "ought to go back to the salt water where [he] belonged" (R. 821; 62, 78, 329–330, 604).

On still another occasion when ten crew members, including ship organizer Weissflog, were late in returning to the ship from shore leave where they had been to the union hall, Captain Gerlach selected Weissflog alone for reprimand, stating in the presence of the other crew members that he was interested only in Weissflog because Weissflog was the organizer (R. 820–821; 58–59, 309). In addition to thus abusing the ship's organizer, Captain Gerlach attempted further unlawfully to discourage membership in the Union by urging deck hand Zmrazek to keep away from Weissflog, not to listen to him, and not to vote for the Union, warning him that even if the Union won the election it would be unable to obtain a contract with the Company for three or four years (R. 819; 42–43).

On the steamer *Widener,* Captain Lehne similarly sought to restrict the solicitation activities of Deck Watchman Babin, who had been designated as the ship's organizer (R. 816; 13). Early in April, the captain summoned Babin to an interview in his room (R. 816; 14). He opened the interview with the statement, "I understand you are an organizer aboard this ship." He then asserted

that "The company does not hire union men aboard any of their ships" and accused Babin of talking unionism to the men and interfering with their work (R. 816; 14). Upon two subsequent occasions Captain Lehne again summoned Babin to his room and reprimanded him for interfering with the work of the crew by talking unionism to them day and night (R. 816; 14–15). Upon these occasions Babin, as the Board found, had not in fact spoken of the Union to the men while they were at work (R. 816–817; 14–15, 39–40); Captain Lehne's unfounded accusations were designed to disguise his curbing of legitimate union activities, and to prevent the successful organization of crew members on the steamer *Widener* (R. 818).

Chief Engineer Hunger sought to isolate Babin from the other members of the crew and limit strictly his opportunities to proselytize for the Union. On one occasion prior to the election when Babin was performing his duties of marking the soundings on a board in the engine room and conveying instructions from the mate in regard to water to be turned on or shut off, the chief engineer, in vile language, ordered him to keep out of the engine room and to cease "talking Union" to the engine-room employees either in their quarters or in the engine room (R. 817; 17–18, 32–35). Up to that time it had been customary for deck watchmen to converse with the engine crew while engaged in their sounding

tasks in the engine room, and the Company had no rule prohibiting employees from talking while on watch (R. 818; 17–18, 318, 403).

On the *Filbert,* ship organizer Lee was admonished by Captain Brinker not to continue asking employees to join the Union after they had once told him "no" (R. 808, 825; 418).

2. Interrogation of Employees Regarding Their Union Membership

A number of the Company's representatives questioned employees concerning their own and their fellow employees' union membership and activities. On the steamer *Johnson,* Captain Wallace, about April 15, 1944, as a prelude to an attack upon the Union's policies, interrogated Wheelsman George Anderson in regard to his union membership (R. 812; 249–250). In May 1944, he asked Anderson whether there were any union members on the forward part of the ship, adding that he knew that the men were all union members in the aft part of the ship (R. 812; 251). In the same month, he asked Anderson whether he "was an organizer or just a good union man" (R. 812; 252). Finally, in June 1944, after the ship left Two Harbors where Anderson had visited the union hall, the captain asked him whether Watchman Bean and Wheelsman Carter (R. 812–813; 253–254), both of whom had been to the union hall, were members of the Union (*ibid.*). When Anderson told the captain to in-

quire of the men themselves, the captain remarked, "They were up to the union hall yesterday, weren't they? They must belong to the Union" (*ibid.*). Captain Wallace, as the Board found (R. 813), thereby conveyed the impression that the Company was engaged in surveillance of the union hall.[4]

Similarly, on the steamer *McGonagle,* Captain Penzenhagen asked one of the employees who was going ashore whether he was bound for the union hall (R. 813; 225); on the steamer *Bunson,* Captain Lawless asked ship organizer Vogt, in the presence of the crew, whether he belonged to the Union (R. 814; 84); and, on the steamer *Morse,* Captain Gerlach inquired of one of the employees under him concerning the identity of the ship organizer aboard that vessel (R. 819; 44).

3. Threats and Attempts to Discharge Union Leaders

Other representatives of the Company threatened to discharge or attempted unsuccessfully to discharge union leaders.

On board the *Olds,* the Company not only discharged one ship organizer, Shartle, because of his union membership and activities (see *infra,* pp. 13–21), but attempted to discharge Shartle's successor, Vogel, for the same reason. In June 1944, First Mate Dobson, upon overhearing Vogel

[4] None of this testimony was denied.

arguing with a deck hand about an accounting of union dues, turned to Vogel and stated: "So you are the union organizer. * * * You can pack up your clothes and get off" (R. 823; 215–216, 218). Vogel protested that the ship was sailing within an hour and that he would not have time to pack his clothes and leave the ship before it sailed (R. 823; 216, 223). Thereupon, First Mate Dobson agreed that Vogel should leave at the end of the trip (*ibid.*). At the termination of the trip, after Vogel had packed his clothes and was about to leave, the mate relented and expressed a willingness for Vogel to remain. Vogel, considering his future status on the ship insecure, left anyway (R. 823; 216, 224).

Chief Engineer Curry on board the *Filbert,* impressed upon ship organizer Lee the precarious nature of his position by telling him that John Zyp, assistant to the fleet captain, who was detailed to the personnel office (R. 810; 669, 670), had attempted to bring about Lee's discharge but that he, Curry, had saved Lee's job by advising the ship's captain, Brinker, that he would resign if Lee were discharged (R. 810–811; 134–135). Captain Brinker did not discharge Lee, but as stated, *supra,* p. 10, attempted to restrict him in his organizational activities.

On board the *Johnson,* Captain Wallace similarly sought to intimidate the ship's organizer, Sims. After berating the Union and telling Sims that he did not want "any part" of the Union on

his ship, Captain Wallace stated with reference to employee Anderson, who was then on shore leave: "Now this old Anderson on here, he is a great Union man. If he comes back drunk. if I catch him with a drink on him, well, the first chance I get I am going to fire him" (R. 811; 280). When Sims protested that Anderson was a good wheelsman, Captain Wallace replied, "Yes, he can wheel a steamboat, sure he can, but the first chance I get I am going to fire him" (*ibid.*).

B. THE DISCRIMINATORY DISCHARGE OF SHARTLE IN VIOLATION OF SECTION 8 (3) AND (1) OF THE ACT

Howard Shartle was hired on March 31, 1944, as a seaman on the steamer *Olds* (R. 830; 168, 170). He had received his A. B. certificate, which classified him as a certified able-bodied seaman, in July of the preceding year after three months' training at a government operated shore training school, three months' service as an apprentice seaman on Great Lakes vessels, and the successful completion of a United States Coast Guard qualifying examination (R. 830; 170, 177, 182–183). This experience, coupled with several months sailing thereafter on ocean vessels, represented the full sum of his experience at the date he was hired by the Company (R. 830; 169, 674, 681). It was, nevertheless, glad to obtain his services, for at that time the war was still in progress and there was a serious shortage of A. B. seamen (R. 833; 520, 668–669, 671–672).

Even after Shartle was hired the ship was still being operated with one less A. B. seaman than was required by the governing maritime regulations (R. 833; 177, 339, 507, 520).

Shartle had joined the Union prior to his employment by the Company and volunteered to act as its organizer on board the *Olds* (R. 830; 170, 182). Upon joining the crew of the *Olds,* he openly and actively engaged in organizational work among the unlicensed personnel (R. 830–831; 170–171, 179, 209). He also distributed copies of the Union's publication, the Pilot, among the crew members, including the immediate supervisors, the second and third mates, and to some of the other licensed personnel (R. 831; 170–171, 179, 209). Thus, the Company knew of Shartle's position as the ship's organizer (R. 832). The Board noted that even in the absence of direct proof of knowledge, the conclusion that the Company knew of Shartle's activities would have been warranted from the fact that, on a small ship such as the *Olds* where men live, eat, and work together for twenty-four hours a day, news of any interest, including news of organizational activities, spreads rapidly among the licensed, as well as the unlicensed, personnel (R. 831–832; 218–219, 317).

On April 24, 1944, First Mate Dobson discharged Shartle without prior warning for the alleged reason that he was "incompetent" (R. 832–833; 172, 174–176, 502). Shartle was re-

placed by an ordinary deck hand, no A. B. seaman being available (R. 833; 337, 502–503, 676–677). After Shartle's discharge, John Vogel, also a watchman on the *Olds,* was designated by the Union to succeed Shartle as the ship's organizer (R. 823; 213, 218). As has already been related (*supra,* pp. 11–12), when First Mate Dobson discovered about June 19, that Vogel had been designated as the ship's organizer, he attempted to discharge Vogel also. Only the fact that Vogel would have had insufficient time to pack his clothes and leave the ship before the scheduled sailing time saved his job for that trip (*ibid.*).

The Company contended at the hearing that Shartle was discharged for incompetence consisting of (1) lateness in reporting for work; (2) inability to wheel a boat properly; (3) failure to do his share of painting work during the fit-out period and an attempted interference with the painting work of others; (4) inability to handle the winches properly; (5) inability to supervise the deck hands under him; and (6) inability to splice a cringle (R. 833; 732).

The evidence disclosed that Shartle had been late in reporting for duty only once, and that upon that occasion, the day after he was hired, he was detained by the Company's physician to whom he had reported for a physical check-up pursuant to the Company's instructions (R. 833,

n. 38; 192–193). The Company did not thereafter, in its brief to the Board, urge lateness as one of the reasons for Shartle's discharge, and the Board regarded the Company's contention in this respect as having no weight and as having been abandoned (R. 833, n. 38). Similarly, the Board gave no weight to the testimony that Shartle's lack of proficiency in wheeling the ship contributed to its decision to discharge him, since the record shows that Shartel was competent in this respect, and that wheeling a ship is not one of the duties of a watchman, the job for which Shartle was hired (R. 834; 184, 185, 540).

The Board found that the other reasons assigned were likewise not the true reasons for Shartle's discharge (R. 838). The charge that Shartle failed to do more than one-half his share of painting during the fit-out period, and that upon one occasion he "razzed" fellow employees for painting more rapidly than he, was denied by Shartle (R. 834; 192, 193, 334–335, 513–514, 525). His painting partner, Vogel, never complained of having to do more than his share of the teamwork, and Shartle was never criticized or reprimanded for any shortcoming in this respect (R. 834; 176, 192, 216, 220–221, 349–350). The Board, under the circumstances, found that the testimony offered by the Company in support of its charge against Shartle was "greatly exaggerated and unreliable," and concluded that, in any event, the Company condoned any deficiency

which Shartle may have displayed at the task of painting when it permitted him to sail following the fit-out period (R. 834–835).

The Company's claim that Shartle was unable properly to operate the ship's winches was based upon a single incident of claimed negligence on Shartle's part occurring about 2 weeks before his discharge (R. 835; 500, 536–537). On that occasion, Shartle and the deck hand assisting him had failed to place the control lever in the proper position, which resulted in unduly tightening the cable wire and might have resulted in a parting of the wire had not Second Mate Chrobak noticed it and corrected the mistake (R. 835–836; 335–336, 524–525, 536). The *Olds,* unlike most vessels to which seamen are accustomed, was equipped with modern electric winches (R. 835, n. 42; 190, 534–535). New men aboard the vessel are not expected to know how to operate the winches; they are taught to do so by the mates; they work at first under the mate's close supervision and gradually are allowed greater responsibility (R. 835, n. 42; 336, 534–535). Shartle was not even reprimanded because of the incident and he continued thereafter as before to operate the winches under some supervision (R. 836, n. 43; 350, 533–534). First Mate Dobson conceded that although it was customary for him to report to the ship's captain serious cases of negligence on the part of employees, he did not inform the captain of Shartle's negligence (R. 515). Other seamen

had committed this same error aboard other vessels of the Company but had not been discharged therefor (R. 836; 344–345).

The Company next contended that Shartle lacked leadership qualities and that this deficiency contributed to its decision to discharge him (R. 835; 520–522, 525). The Company could cite no specific occasion when Shartle had displayed a shortcoming in this respect, and the Board gave no weight or credit to the conclusionary testimony in this regard (R. 835).

The incident which, according to the Company, precipitated Shartle's discharge was the discovery about three days before the discharge that Shartle was unable properly to splice a cringle on a tow line, a difficult task with which A. B. seamen are expected to be familiar, but which they are seldom called upon to perform (R. 836; 219–220, 221, 222, 514–515). The necessity for performing this type of work arises only about once in six months, and although Shartle had on one occasion prior to his employment by the Company helped a mate perform a similar task, he had never had occasion to assume the responsibility for such a job prior to the occasion in question (R. 836–837; 193–195, 200, 338). On that occasion while Shartle and his deck hand were attempting to splice the cringle, watchman Vogel, who was off duty at the time, offered to assist them (R. 836; 219, 222). Vogel had had 20 years of experience as a seaman

and was thoroughly familiar with the proper way in which to splice (R. 836; 220). While Vogel was thus assisting Shartle and showing him how properly to perform the task, First Mate Dobson appeared upon the scene and, after commenting on the fact that Shartle did not know how to perform the job, ordered both Vogel and Shartle to discontinue the job (R. 836; 194, 209, 216, 220, 501.) Instead of permitting Vogel to teach Shartle this difficult operation as Vogel had volunteered to do, and thereby helping Shartle to become a skilled and experienced A. B. seaman, First Mate Dobson assigned the task to Vogel when he later came on watch (R. 836; 220, 222, 518). The Board found that First Mate Dobson's conduct in this regard (R. 838) demonstrated that Dobson was more concerned with building up a plausible excuse for ridding the *Olds* of the ship's organizer than with acquiring an experienced A. B. seaman. When the mate discharged Shartle three days later, there was no A. B. seaman available to replace him and it became necessary for Dobson to promote a deck hand to perform Shartle's job as watchman (R. 833; 178, 502–503, 507–508). Second Mate Chrobak, who was the immediate supervisor of the deck hand after his promotion, did not know whether the deck hand had ever had any experience at splicing because no occasion requiring splicing had arisen during the remainder of the

season (R. 837; 337–338). Dobson admitted that during the preceding four years he had found A. B. seamen, other than Shartle, inexperienced at splicing and that he had not discharged them for that reason (R. 836; 514–515).

The Board noted that some of the incidents recited by the Company indicated that Shartle lacked experience and skill possessed by oldline A. B. seamen; but since the Company knew when it hired him that Shartle was at the threshold of his career as an A. B. seaman, it must have expected to train him in some respects in which its older A. B.'s were already skilled (R. 837). Third Mate Hewer conceded that although A. B. seamen like Shartle, trained at government schools, were often found to be inexperienced and unskilled, they were not discharged on that account, but were given training and instructions among other things, in the handling of equipment, in leadership, and in painting, the very respects in which Shartle was claimed to have been deficient (R. 837–838; 537–538). The Company's industrial relations manager testified that due to the difficulties in obtaining experienced crew members the Company was willing to put up with more from its men than it ordinarily might, and was even taking on "one-eyed and one-legged men" (R. 837; 664, 669, 671, 672). The Board found that the Company's failure to instruct or train Shartle, except for the limited instructions regarding operation of the modern-type electric

winches, indicated, "either that Shartle was not deficient * * * as claimed, or that [the Company] did not instruct Shartle because it desired to rid itself of him for reasons aside from the manner in which he performed his work" (R. 838).

First Mate Dobson, who discharged Shartle, manifested extreme antipathy for the Union and a determination to thwart all efforts of the union to organize seamen on the *Olds* by ridding the ship of its organizers (R. 855, 838; 172, 215–216, 218). In making the discharge, First Mate Dobson acted on his own initiative without any recommendation from Shartle's immediate superiors, Second Mate Chrobak and Third Mate Hewer, although it was the duty of those supervisors to recommend the discharge of employees under them whom they found incompetent (R. 832–833; 344, 352, 504–505, 528, 677). As shown (*supra*, pp. 11–12), it was also First Mate Dobson who stated to employee Vogel upon discovering that the latter had succeeded Shartle as the ship's organizer, "So you are the union organizer. * * * You can just pack up your clothes and get off." In view of Dobson's anti-union animus, his unsatisfactory explanation for Shartle's discharge and his attempt to discharge Vogel because of his position as ship's organizer, the Board found that Shartle was dismissed "because of his connection with and activities on behalf of the Union, and not because [he] was an incompetent employee" (R. 855).

C. OTHER ANTI-UNION STATEMENTS OF THE COMPANY CONSIDERED BY THE BOARD

In addition to the foregoing findings of interference, restraint, coercion and discrimination, *supra,* pp. 7–21, the Board also considered other statements made by the Company and its supervisory personnel. Some of these statements the Board held were not violative of the Act. Others, which were found by the Board to constitute evidence of unfair labor practices, may now be privileged under Section 8 (c) of the amended Act, *infra,* pp. 44–46, and therefore the Company is not now precluded by the Board's order from repeating such statements if it so desires.[5] However, in order to complete the picture of the evidence considered by the Board, and in view of the holding of the court below on the retroactive effect of Section 8 (c), we are setting forth herein the evidence in question.

1. The "Ferbert Letters"

In the period shortly preceding the election, when the Union's organizing campaign was at its height, A. H. Ferbert, the Company's president

[5] The Board made a similar concession to the court below, but did not, as the court implies (R. 875) concede that "the letters cannot be considered to constitute unfair labor practice." The Board contended below, as we do here, *infra,* pp. 44–46, 128–136, that the Ferbert letters and other statements were properly considered as evidence of unfair labor practices under the law in effect when it issued its decision, and that Section 8 (c) may not be applied retroactively to make such consideration improper.

(R. 803; 736, 744, 746) addressed two letters to each of the unlicensed personnel on the Company's ships (R. 803; 57, 743–746). These letters, although alleged to have been written for the purpose of acquainting the employees with the Company's neutral position, and containing declarations of neutrality, were found by the Board to have been designed to "convey the impression that collective bargaining would be fruitless" and that "the employees' selection of the Union would result in a forfeiture by the employees of their opportunities for promotion" (R. 806).

The first letter, dated May 2, 1944 (R. 805; 57, 743–744), stated "that neither the Union nor the Company has today control over what wages shall be paid. * * * wage rates * * * have been frozen by the Government * * *" (R. 805; 57, 743). Although the statement was not literally untrue, the impression it was designed to leave with the employees was that there could be no fruition to the Union's campaign promises that if designated as their bargaining representative it would obtain for the employees higher wage scales, increased overtime pay and other additional remuneration. The letter thereby implied that the employees did not need a bargaining representative. (R. 806; 108–122.) Actually the War Labor Board did permit upward wage adjustments for seamen on the Great Lakes at the instance of the union, a fact which the Company well knew (R. 806; 112), and the Company

therefore misled its employees by the choice of language used in the first "Ferbert letter" (R. 806; 110–112).

The second letter sent to all the employees by President Ferbert is dated June 1, 1944, less than 1 week before the commencement of the voting on the Company's ships (R. 804; 26, 57, 744–746). This letter pointed to the Union's "rotary hiring" policy and stated that if that policy were adopted it not only would prevent the employees from freely changing ships but also, inaccurately, that it would preclude them from obtaining higher and better paying positions even on the same ship (R. 805–806; 57, 113–117, 745). The letter also called upon the employees to study the "past record of this Union and the past record of the Company" thereby indicating as the Board found, that the employees must choose between their allegiance toward the Company and their desire for a bargaining representative (R. 828; 57, 745).

The Board found that the "Ferbert letters," when considered in context of the other violative statements and acts of the Company, were not constitutionally protected (R. 855, 828–829).

2. *The appeals to race prejudice, and other disparagement*

The Company's supervisors attempted to alienate the employees against the Union, by concerted appeal to the anti-Negro feelings of many

crew members. Thus, according to the credited testimony of seaman Lee, Captain Brinker of the *Filbert* characterized the Union as a "bunch of nigger loving bastards" and stated that if the Union won the election it would "load the ship with niggers" (R. 809; 132). Captain Brinker also told Lee, in the presence of other crew members, that if the Union won the election "I am going to hire a big nigger to be your partner and the blacker the better" (R. 809; 133).

First Assistant Engineer Anderson of the *Johnson* followed the same line, telling the employees who favored the Union "You and the CIO if you do win the election you are going to bring up a lot of goddam niggers from the Coast, and they are going to put one in every room. How would you like to eat and sleep with a nigger?" (R. 812; 282). These words were echoed by Captain Wallace who asked seaman Anderson (not related to the first assistant engineer) whether he "would like to sleep in a room with a nigger" (R. 813; 251). Second Assistant Engineer Benson of the *McGonagle* also interspersed his other anti-union statements with remarks that he did not like to sleep among "a bunch of niggers" (R. 813; 226–227), while Captain Lawless of the *Bunson* told seaman Vogt "If these lake boats are organized they will have a bunch of niggers down here and you will have to work with them" (R. 814; 85).

Captain Murray of the *Olds* told two of his seamen that "if the Union gets in here on the Lakes, you are going to be eating and sleeping with the niggers" (R. 822; 171), and told another employee, Vogel, that he would hate to give orders to Negro crewmen (R. 822; 215). On the same ship the chief engineer (whose name is not reported) told members of the crew that he was opposed to the Union because it sponsored a close working relationship between Negroes and white men (R. 822; 214).

The ships' officers did not limit themselves to the Negro issue as a basis for disparaging the Union and its organizers before the crew members. The Board found, upon the credited testimony of seaman Lee, that Captain Brinker had repeatedly stated, in profane language, that the principles of the Union members were "rotten," "they were lying bastards" and the Union itself was "no — good" (R. 809; 131). First Assistant Engineer Anderson told seaman Sims that it was foolish for the men to pay Union dues to support the Union's officers, whom he characterized as "gas hounds" and "drunks," and that "The CIO isn't going to last always, President Roosevelt isn't going to live always, and when he dies all the Jews, the God Damned Jews are going to be out and we will have a different set-up" (R. 812; 262, 281–282). Captain Lawless also told seaman Vogt that the N. M. U. and the C. I. O. were "a bunch of Communists and Jews" (R.

814; 84), and Third Mate Carr and Third Assistant Engineer Scharmin repeatedly advised the crew that the Union's officials were agitators and Communists (R. 815; 86–87).

The Board found the statements set forth above, *supra,* pp. 24–27 when considered in the context of all the other unfair labor practices perpetrated by the Company and its supervisory personnel, "constituted an integral part of the [Company's] broad pattern of coercive conduct" (R. 826–828).

II

THE BOARD'S CONCLUSIONS AND ORDER

The Board, after carefully reviewing the record and the intermediate report of the Trial Examiner, and after considering the exceptions, briefs and oral argument, concluded that the findings and conclusions of the Trial Examiner were free from serious error. The Board specifically agreed with the Trial Examiner as to the import of the "Ferbert letters," finding that, although they were not unlawful *per se,* when considered in the context of the Company's other illegal acts and statements they "assume[d] a coercive character which is not privileged by the right of free speech" (R. 855). Further, in finding that the discharge of Shartle was motivated by anti-union animus, the Board noted the fact that First Mate Dobson attempted to discharge Vogel upon learning that the latter had replaced Shartle

as ship's organizer (R. 855)—a consideration to which the Trial Examiner had not adverted in his statement of his conclusions respecting Shartle's discharge. The Board also corrected an error in the intermediate report wherein the Trial Examiner had stated that Seaman Lee had not solicited Seaman McGuiness to join the Union (R. 808, n. 8), when in fact McGuiness had testified that Lee had asked him to do so (R. 855). With these corrections and additions it adopted the findings, conclusions and recommendations of the Trial Examiner without repeating them in its own decision (R. 854–855).

The findings, summarized above, *supra,* pp. 4–27, were to a considerable extent based upon testimony of Board witnesses which was either undenied, admitted, or substantially corroborated by the Company's own witnesses. Where findings were based upon a resolution of the credibility of contradictory witnesses, the Board relied upon the Trial Examiner's carefully explained resolutions of such conflicts in the evidence, since he had observed the witnesses and heard their testimony, and since the Board found *no* basis for deciding that the determinations as to credibility were improper.

Upon the findings so made the Board concluded that the Company had engaged in a course of conduct designed to interfere with, restrain and coerce its employees in violation of Section 8 (1) of the Act (R. 823–830, 855), and had dis-

criminatorily discharged Howard Shartle because of his activity as a Union organizer, in violation of Section 8 (3) and (1) of the Act (R. 838–839, 855). The Board therefore issued its order directing the Company to cease and desist from discouraging membership in the Union or any other labor organization, and from in any other manner interfering with, restraining or coercing its employees in the exercise of rights guaranteed them under Section 7 of the Act; to offer reinstatement to the discriminatorily discharged employee, Howard Shartle, and make him whole for any loss of wages; and to post the usual compliance notices on each of its ships (R. 856–857). The subsequent proceedings during the time of judicial review have been described at pp. 3–5, *supra*.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the Taft-Hartley Act and the Administrative Procedure Act have changed the scope of judicial review of orders of the National Labor Relations Board.

2. In holding that the procedural changes made by Sections 8 (c), 10 (b), and 10 (c) of the Taft-Hartley Act, and Section 7 (c) of the Administrative Procedure Act are applicable to Board proceedings and decisions made prior to the effective date of these statutes.

3. In substituting for the Board's findings concerning the credibility of witnesses, weight of evidence and inferences therefrom, contrary findings of its own.

4. In failing to accept as the law of the case the holding of this Court that the Board's determinations as to the credibility of witnesses were valid and proper.

5. In holding that the Board's findings are not supported by substantial evidence on the record considered as a whole.

6. In seemingly holding that the company could not be charged with responsibility for the acts of officers on 7 out of 73 ships unless that conduct could be traced to a policy of the central management.

7. In not enforcing the order of the Board.

SUMMARY OF ARGUMENT

I

Inasmuch as the proceeding before the Board was concluded before either the Administrative Procedure Act or the Labor Management Relations Act became effective, the provisions of those statutes relating to Board procedure and the admissibility of evidence are applicable "only to the extent that the procedural steps dealt with have not yet been taken". Congress did not intend to reach back and nullify prior proceedings. This is not only the well established general rule

of statutory construction, but is supported by all decisions under the statutes in question (except that in the instant case), by the terms of the statutes, and by the rejection by Congress of a proposal to make the Labor Management Relations Act applicable to pending cases. The result is that the new statutes control the scope of judicial review, which is taking place after their enactment, but that the Board's order cannot be overturned for failure to adhere to procedural provisions not in effect when it was entered.

The only change in substantive law relates to the illegality of the Ferbert letters. The Board has conceded that, in view of Section 8 (c) of the new statute, such letters are not now unlawful and their repetition in the future not enjoinable.

II

A. The Administrative Procedure Act and the Labor Management Relations Act provide that the Board's findings shall be conclusive "if supported by substantial evidence on the record considered as a whole." Although the word "substantial" was not contained in the 1935 National Labor Relations Act, the courts uniformly held that "substantial" evidence was necessary to sustain a Board finding. The phrase "on the record considered as a whole" was added because some persons thought that the substantial evidence rule permitted the courts to look only at

the excerpts from the record supporting one side of the case. But the rule has never been so limited. The earliest cases in this court (*Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 229; *National Labor Relations Board* v. *Columbian Enameling and Stamping Co.*, 306 U. S. 292, 299–300), and in the courts of appeals assimilated the scope of review under the substantial evidence test to that governing direction of a verdict in jury cases, as to which it was clear that the court would consider the whole record to determine whether a reasonable man might reach the particular conclusion. And this Court's decisions under the National Labor Relations Act demonstrate that it has "not confined [itself] to the scope of the Board's view of the case, and [has] examined all the evidence." *National Labor Relations Board* v. *Indiana & Michigan Electric Company*, 318 U. S. 9, 17, especially.

Since the test of reasonableness announced in the *Consolidated Edison* case required consideration of the record as a whole, the new statutes did not change the scope of review. Apart from the decision below, every court of appeals which has passed upon the question—seven in all—has so concluded.

B. The history of the Administrative Procedure and the Labor Management Relations Acts confirms this conclusion. It shows that when the former was passed its draftsmen recognized that

the scope of review was not being changed, but only clarified to resolve the doubts held by some persons as to whether the substantial evidence test required examination of the record as a whole. The Labor Management Relations Act in terms unquestionably adopts the same rule as the Administrative Procedure Act. The history of the later statute shows that the majority of the Senate Committee which was responsible for the language contained in the Act intended that the rule under the two statutes be the same, and succeeded in defeating proposals by the House and a minority of the Senate Committee which would clearly have had the effect of enlarging the scope of review. It is true that a number of members of Congress, including the House conferees on the Labor Management Relations Act and Senator Taft, made statements that the scope of review was being broadened. But this resulted from the fact that they were not fully familiar with, or had not properly analyzed, the decisions of this Court and of the courts of appeals, and thus incorrectly assumed that the prior scope of review was narrower than it really was. This mistaken impression, however, obviously does not provide an adequate basis for giving an expanded meaning to the expressions used. The most that can be said is that such statements make "the legislative history * * * more conflicting than the

text is ambiguous." *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, 49.

C. The court below mistakenly regarded other sections of the two statutes as enlarging the scope of judicial review. But these provisions—that the Board should decide cases on the preponderance of the evidence (Section 10 (c), Labor Management Relations Act), and that the Board must observe the rules of evidence (Section 10 (b) Labor Management Relations Act) and decide "in accordance with the reliable, probative, and substantial evidence" (Section 7 (c) Administrative Procedure Act)—govern the conduct of the Board in making decisions initially, not the functions of the reviewing court, which are defined in Section 10 (e) of both acts.

III

A. In its prior opinion in this case, this Court indicated that the Board's findings were supported by substantial evidence under the test of the *Consolidated Edison* case. If, as we have argued, the scope of review has not been enlarged by the recent legislation, the prior decision is controlling here and there is no need to re-examine the evidence. But even if it be assumed that the present standard of review is somewhat broader, the findings of the Board are adequately supported.

B. In concluding that the Board's findings were supported by insufficient evidence, the court

below examined the evidence *de novo,* substituted its views as to the credibility of witnesses for those of the Board, and held that the acts of the ship's officers were not properly attributable to the company. With respect to credibility and company responsibility, the decision is inconsistent with this Court's prior decision. The law as to company responsibility for the acts of supervisory officers has not been changed by the new legislation. Nor does any standard of appellate review permit the reviewing court to substitute its decision for that of the original fact finder with respect to the credibility of witnesses—particularly when this Court has described the "evaluation of the facts" as "thoughtful and discriminating." 337 U. S. at 660. Furthermore, even on the assumption that the scope of review has been enlarged, it is clear that Congress did not intend the reviewing court to substitute its judgment *de novo* on the facts for that of the Board. And yet it is apparent that that is precisely what the court below has done.

C. It is clear from its opinion that the court below did not accept the Board's conclusion as to the credibility of witnesses and that it chose to believe the company's witnesses rather than the Board's whenever there was a difference of consequence. As has been indicated, this was not the function of the reviewing court, unless it could conclude that on the record as a whole no reasonable fact finder could have found as did

the Board. In this case, on the contrary, examination of the record will show that on two of the seven ships covered by the Board's findings—the *Johnson* and the *McGonagle*—the testimony relied upon by the Board was uncontradicted. On each of the other five ships the record clearly discloses that one or more of the chief officers was not testifying honestly and candidly. The only thing out of the ordinary in this case, with respect to the matter of credibility, is the number of Company witnesses whose lack of veracity can be determined from the printed record.

D. The court below erred in finding that the Board's decision rested upon hearsay and incompetent testimony. The Board did not rely on the hearsay statements by Shartle referred to by the court, and the mere admission of such testimony is not ground for reversal. Statements by ship officers to seamen as to an intention to discharge a seaman other than the listener for union activity and as to efforts of another company officer to discharge a union organizer are not inadmissible as hearsay, since the fact of the making of the statements, apart from their truth, would exert pressure upon the employees. In any event, since the hearing was held before the enactment of the 1947 Act, the Board was not bound to observe the rules of evidence applied by the courts as long as its findings are supported "by the kind of evi-

dence on which responsible persons are accustomed to rely in serious affairs." *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. 2d 862, 873 (C. A. 2), certiorari denied, 304 U. S. 576.

E. The company is responsible for the conduct of the officers of its vessels, whether or not their acts are traced to orders from the central management, and irrespective of whether that management was aware of their conduct or had given the officers instructions to be neutral. To the seamen, the officers are the company. The men cannot be expected to assume that the officers are disregarding orders from company headquarters, particularly when no such instructions to the officers are communicated to the men. The Ferbert letters, even with their declarations of neutrality, plainly manifested the company's opposition to the union, and the anti-union conduct of the officers would naturally have been regarded by the men as a part of a company campaign against the union. The similarity of the activity of the officers on the seven ships as to which testimony was taken also supports the Board's finding that the officers' conduct was tied in with the policies of the company. The fact that no testimony was adduced as to the other 66 vessels operated by the company clearly does not relieve it of responsibility.

ARGUMENT

I

THE ADMINISTRATIVE PROCEDURE ACT AND THE LABOR MANAGEMENT RELATIONS ACT DO NOT APPLY RETROACTIVELY TO THE COMPLETED PROCEDURES OF THIS CASE

In its opinion in this case in June, 1949 (337 U. S. 656, 661), this Court held that the case should be remanded to determine "whether the Administrative Procedure Act * * * and the Taft-Hartley Act * * *, enacted between issuance of the Board's order and the Court of Appeals' decision, are applicable to and, if applicable, in any way affect Board procedures and the scope of judicial review of Board orders. On the remand the court below held those statutes applicable in all respects to the present case, just as if they had been in effect when the proceeding was instituted.

The proceeding before the Board terminated with the Board's decision of August 13, 1946, before the Administrative Procedure Act[6] became effective, and before the Taft-Hartley Act was passed.[7] Judicial review of the Board's decision

[6] The Procedure Act was approved on June 11, 1946, 60 Stat. 237, 5 U. S. C. 1001. Various provisions became effective three, six and twelve months later, all after August 13, 1946. See Section 12, 5 U. S. C. 1011.

[7] The Taft-Hartley Act was enacted on June 23, 1947, and became effective on August 22, 1947. 61 Stat. 136, 29 U. S. C., Supp. II, 141.

is taking place, of course, after those statutes have gone into effect.

A. THE PROCEDURAL PROVISIONS; ONLY THE SCOPE OF JUDICIAL REVIEW IS GOVERNED BY THE NEW STATUTES

In addition to the provisions for judicial review, as to the applicability of which the parties are not in dispute, the court below held applicable to the instant case various other provisions of the Administrative Procedure Act and the Labor Management Relations Act relating to the admission of evidence before the Board and evidentiary standards to be applied by the Board. The sentence in Section 7 (c) of the Administrative Procedure Act invoked by the court below provides that agencies must consider "the whole record," and that orders must be issued only when supported by and in accordance with "reliable, probative and substantial evidence."[8] The court also referred to Sections 10 (b) and (c) and 8 (c) of the Labor Management Relations Act. Section 10 (b) requires that Board proceedings "so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States." Section

[8] "Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence."

10 (c) requires the Board to act "upon the preponderance of the testimony taken." Section 8 (c) of the Taft-Hartley Act provides that:

> (c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not * * * *be evidence* of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit. [Italics added.]

Of these provisions, certainly Section 7 (c) of the Procedure Act and Section 10 (c) of the Labor Management Relations Act did not change existing law. But in any event, none of these provisions apply to proceedings completed before the statutes went into effect.

With respect to procedural changes, all decisions except that of the court below in the instant case have held that "Insofar as Congress amended certain procedural provisions of the Act it reflected no intention to reach back and nullify procedural steps already taken. Those steps already taken, pleadings, and all things done under the old law must stand. Procedural changes operate in the future." *National Labor Relations Board* v. *National Garment Co.*, 166 F. 2d 233, 238 (C. A. 8), certiorari denied, 334 U. S. 845. "The changes or amendments * * * are procedural changes which, accord-

ing to the well-established rule, are applicable to pending cases only to the extent that the procedural steps dealt with have not yet been taken." *National Labor Relations Board* v. *Whittenberg,* 165 F. 2d 102, 104 (C. A. 5). Sutherland, *Statutory Construction* (3d Ed., 1943), Vol. 1, p. 438, 2 *id.* 136, states the rule as follows:

> When a statute affecting procedure is amended while a suit is pending, the provisions added by amendment are applicable only to proceedings taken after the amendment and not to proceedings taken prior thereto.
>
> * * * where a new statute deals with procedure only, prima facie it applies to all actions—to those which have accrued or are pending, and to future actions. But the steps already taken, the pleadings, and all things done under the old law will stand, unless an intent to the contrary is plainly manifest.

This rule has been accepted and applied by the Second, Third, Fifth, Eighth and Tenth Circuits, and even by the Sixth Circuit itself in a prior case. *National Labor Relations Board* v. *Mylan-Sparta Co.,* 166 F. 2d 485, 488 (C. A. 6) in which the court stated that "the Act is prospective, not retroactive, in its effect." See in addition to the cases quoted above. *National Labor Relations Board* v. *Sandy Hill Iron & Brass Works,* 165 F. 2d 660, 662 (C. A. 2); *National Labor Relations Board* v.

Brozen, 166 F. 2d 812, 813 (C. A. 2); *National Labor Relations Board* v. *Clark*, 176 F. 2d 341, 343 (C. A. 3); *National Labor Relations Board* v. *Gate City Cotton Mills*, 167 F. 2d 647, 649 (C. A. 5); *National Labor Relations Board* v. *Itasca Cotton Mfg. Co.*, 179 F. 2d 504, 506–507 (C. A. 5); *National Labor Relations Board* v. *Piedmont Cotton Mills*, 179 F. 2d 345, 346 (C. A. 5); *National Labor Relations Board* v. *Fulton Bag & Cotton Mills*, 180 F. 2d 68, 72 (C. A. 10).

That these general principles were intended to be applicable is confirmed both by the provisions and the history of the Administrative Procedure Act and the Taft-Hartley Act, for, in each, Congress made specific provision that they should not be applied retroactively. Section 12 of the Administrative Procedure Act provides in part:

> This Act shall take effect three months after its approval except that sections 7 and 8 shall take effect six months after such approval, * * *, and *no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement.* [Italics supplied.]

The language of the Taft-Hartley Act, when read in the light of the legislative history,[9] also shows that Congress did not intend to give the amendments retroactive effect. Section 104 pro-

[9] Compiled in *Legislative History of the Labor Management Relations Act, 1947* (Gov't. Printing Office, 1948).

vides that "The amendments made by this title shall take effect sixty days after the date of the enactment of this Act [i. e. August 22, 1947] * * *." Section 102 (c) of the House bill,[10] which would have had the effect of precluding the Board and the courts from considering any matters deemed to be violations of the Wagner Act (such as the Ferbert letters) unless such matters continued to be unfair labor practices under the amendments, was deliberately rejected in conference.[11]

The application of these principles to the instant case results in the scope of judicial review being controlled by the subsequent statutes, since the judicial review takes place after the effective dates of the new legislation. It also means, however, that the validity of the Board's decision must be tested, under the "new" scope of review, by the law in effect at the time the Board acted. A decision cannot be reversed because of the Board's failure to observe procedural or evidentiary requirements not then in existence. Even if the scope of review has been enlarged, which we deny, this would not mean that the reviewing court could with propriety test what the Board did on the basis of legal provisions not in effect at the time the Board acted.

The court below, however, has held that all of the above provisions of the Administrative

[10] H. R. 3020, 80th Cong., 1st sess., *id.* at pp. 82, 209.

[11] *Id.* at p. 565.

Procedure and Taft-Hartley Acts are applicable to this case. In so concluding its decision is inconsistent with all of the foregoing authorities and principles.

B. SUBSEQUENT CHANGES IN SUBSTANTIVE LAW DO NOT AFFECT THE VALIDITY OF A BOARD ORDER, BUT, AT MOST, LIMIT THE *IN FUTURO* EFFECT OF THE CEASE AND DESIST ORDER

The only change in substantive law involved in this case relates to Section 8 (c) of the Taft-Hartley Act and its effect upon the Board's treatment of the Ferbert letters.[12] Section 8 (c), in addition to the evidentiary provision quoted above, also provides that the expressions therein described "shall not constitute" an unfair labor practice.

The general rules which govern in determining whether a statute applies to prior transactions are well established. In view of the general savings statute, 1 U. S. C. (Supp. II, 1948) 109, (previously 1 U. S. C. 29), changes in substantive law are not retroactive, unless the legislature specifically so declares. *United States* v. *Reisinger,* 128 U. S. 398, 403; *Hertz* v. *Woodman,* 218 U. S. 205, 218; *Great Northern Ry. Co.* v. *United States,* 208 U. S. 452, 465. Nevertheless,

[12] The court below (R. 871, 880) also referred to Section 10 (c), which states that "no order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back payment, if such individual was suspended or discharged for cause." Clearly, this provision merely reaffirms preexisting law. *National Labor Relations Board* v. *Dixie Shirt Co.*, 176 F. 2d 969, 974 (C. A. 4).

although liabilities previously incurred are not destroyed (such as liability for reinstatement and back pay [13]) (*ibid.*), conduct not unlawful under new legislation cannot continue to be enjoined *in futuro*. *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 18 How. 421, 431–432; *Ziffrin* v. *United States*, 318 U. S. 73, 78; *Public Utilities Comm. of Ohio* v. *United Fuel Gas Co.*, 317 U. S. 456, 466; *Texas Company* v. *Brown*, 258 U. S. 466. In recognition of this fact, the Board has consistently conceded, and the courts have held,[14] that a court cannot by way of enforcing the Board's order issue an injunction which will restrain in the future conduct which is no longer illegal under the 1947 Act.

Apart from this effect of substantive changes upon orders operating *in futuro*, the general savings statute requires that as to conduct which occurred prior to the amendments the original Act must "be treated as still remaining in force." [15]

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[13] This question will be discussed in the brief for the Board in *Universal Camera Corp.* v. *National Labor Relations Board*, No. 40, this Term.

[14] *L. A. Young Spring & Wire Corp.* v. *National Labor Relations Board*, 163 F. 2d 905 (C. A. D. C.), certiorari denied, *sub nom. Foreman's Ass'n of America* v. *L. A. Young Spring & Wire Corp.*, 333 U. S. 837; *National Labor Relations Board* v. *Budd Mfg. Co.*, 169 F. 2d 571 (C. A. 6), certiorari denied, 335 U. S. 908; *National Labor Relations Board* v. *Brozen*, 166 F. 2d 812 (C. A. 2).

[15] *National Labor Relations Board* v. *National Garment Co.*, 166 F. 2d 233, 236–238 (C. A. 8), certiorari denied, 334 U. S. 845; *National Labor Relations Board* v. *Gate City Cot-*

In view of these principles, the Board has reorganized that in view of the new Section 8 (c) any order operating *in futuro* could not restrain the repetition of such statements as were contained in the Ferbert letters. Since nothing else turns on whether such letters were unfair labor practices when they were written, that question is now academic. That does not mean, however, that at the time of the Board's hearing and decision, it was improper for the Board to treat the letters in their factual context *as evidence* of the other unfair labor practices found.

Conclusion. In summary, the new statutes are applicable in the instant case only to the extent that they prescribe the scope of judicial review, and insofar as the changes in substantive law might exempt certain types of utterances from the injunctive provisions of the Board's order. In all other respects the new statutes are inapplicable.

Since the new statutes determine the scope of judicial review, it becomes necessary to consider whether the scope of review has been changed.[16]

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ton Mills, 167 F. 2d 647, 649 (C. A. 5); *National Labor Relations Board* v. *Piedmont Cotton Mills*, 179 F. 2d 345, 346 (C. A. 5); *Eastern Coal Corp.* v. *National Labor Relations Board*, 176 F. 2d 131, 137 (C. A. 4); *Lovely* v. *United States*, 175 F. 2d 312, 316 (C. A. 4); *National Labor Relations Board* v. *Mylan-Sparta Co.*, 166 F. 2d 485, 488 (C. A. 6); *National Labor Relations Board* v. *Budd Mfg. Co.*, 169 F. 2d 571, 575 (C. A. 6), certiorari denied, 335 U. S. 908.

[16] The opinion below states that "The Board concedes that the review in this Court is controlled by the two statutes"

II

THE SCOPE OF JUDICIAL REVIEW OF BOARD FINDINGS OF FACT HAS NOT BEEN CHANGED BY THE ADMINISTRATIVE PROCEDURE ACT OR THE LABOR MANAGEMENT RELATIONS ACT

INTRODUCTION

As has been pointed out, this Court stated in its previous opinion in this case that "without doubting the existence here of evidence substantial enough under the Wagner Act, *Consolidated Edison Co.* v. *Labor Board*, 305 U. S. 197, 229, to warrant the Board's findings, we are not certain whether that standard controls this case." 337 U. S. at 661. This would seem clearly to mean that, tested by the scope of review enunciated in the *Consolidated Edison* case, the evidence is sufficient to support the Board's findings and conclusions that the Company violated Sections 8 (1) and (3) of the Act.

The fact that Mr. Justice Jackson alone reserved opinion "as to the sufficiency of the evidence under the Wagner Act" (337 U. S. at 662) indicates that the other members of the Court were satisfied on this point. Having expressed this view after a "careful scrutiny of the record," and after coming to the conclusion that "the

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(R. 870). Since the Board's concession, as stated in the brief and argument below, was the same as that set forth above, the court's statement presumably relates only to the scope of judicial review.

printed transcript suggests thoughtful and discriminating evaluation of the facts" by the Trial Examiner, we think it clear that this Court did not leave open the question whether, assuming that the scope of review has not been changed, the Board's findings and conclusions should be sustained. Since, unless the scope of review has been changed, the Board's order should now be enforced, we shall first discuss the question whether the new statutes have broadened the scope of judicial review. We will then analyze the decision of the court below and the evidence in the case, in support of our further position (Point III, *infra*), that even if the scope of review has changed the Board's findings and conclusions are valid and should have been sustained.

A. THE NEW STATUTES ON THEIR FACE DO NOT ALTER BUT MERELY RESTATE THE SUBSTANTIAL EVIDENCE RULE

It is the Government's position that the language of the relevant provisions of the Taft-Hartley Act and the Administrative Procedure Act dealing with scope of judicial review clearly and unambiguously embody the same standard of review which theretofore existed under Section 10 (e) of the Wagner Act. As we shall show below, every other court of appeals which has passed upon the question—seven under the Taft-Hartley Act and four upon the Administrative Procedure Act—have so held. See pp. 83–91, *infra*.

1. THE REQUIREMENT THAT THE EVIDENCE BE "SUBSTANTIAL" IS NOT NEW

The Wagner Act provided that "the findings of the Board as to the facts, if supported by evidence, shall be conclusive." Section 10 (e). In the *Consolidated Edison* case, 305 U. S., at 229, this Court held that the word "evidence" in this context meant "substantial evidence."

Section 10 (e) of the Administrative Procedure Act provides that the reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law * * *; (5) unsupported by substantial evidence * * *. In making the foregoing determinations the courts shall review the whole record or such portions thereof as may be cited by any parties, and due account shall be taken of the rule of prejudicial error."

Section 10 (e) of the National Labor Relations Act as amended by the Labor Management Relations Act of 1947 provides that the Board's findings, "if supported by substantial evidence on the record considered as a whole shall be conclusive."

Both the Procedure Act and the Labor Management Relations Act add the word "substantial" to the term "evidence" as used in the original act. Inasmuch as it had uniformly been

held since the very first cases under the 1935 Act, *Washington, V. & M. Coach Co.* v. *National Labor Relations Board,* 301 U. S. 142, 147, that the test was "substantial evidence", this addition clearly made no change in the scope of review and was merely declaratory of existing law. E. g. *National Labor Relations Board* v. *Universal Camera Corp.,* 179 F. 2d 749, 752 (C. A. 2), certiorari granted, 339 U. S. 962, No. 40, this Term.

2. The Requirement That Substantiality Be Determined Upon Consideration of the Record as a Whole Does Not Change the Scope of Review

The only other change made by the two recent statutes is the explicit requirement that the substantiality of the evidence be determined "on the record considered as a whole." Although the language of the Procedure Act and of the Labor Management Relations Act is not *in haec verba,* the words used are so similar as to make clear that they have the same meaning.

It is the Government's position that the "substantial evidence" rule never limited the reviewing court to looking at only a part of the evidence in the record, and indeed, that its application always contemplated examination of the record as a whole. As we shall show, the words "on the record as a whole" were added for clarifying purposes because of a misconception by some persons as to the true meaning of the prior rule.

The leading cases defining the substantial evidence rule, *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 229, and *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.,* 306 U. S. 292, 299–300, both declare that "substantial evidence" means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." In support of this statement, the *Consolidated Edison* case cited three opinions of the Courts of Appeals. The first of these, *Appalachian Elec. Power Co.* v. *National Labor Relations Board,* 93 F. 2d 985, 989 (C. A. 4), stated that the rule as to substantiality was the same as that "applied in reviewing the refusal to direct a verdict at law." The second case cited was *National Labor Relations Board* v. *Thompson Products,* 97 F. 2d 13, 15 (C. A. 6). The court there said:

> "Substantial evidence" means more than a mere scintilla. It is of substantial and relevant consequence and excludes vague, uncertain, or irrelevant matter. It implies a *quality of proof which induces conviction and makes an impression on reason.* It means that the one *weighing the evidence takes into consideration all the facts presented to him and all reasonable inferences, deductions and conclusions to be drawn therefrom* and, considering them in their entirety and relation to each other,

> arrives at a fixed conviction. [Italics supplied.]

This language makes it clear that the reasonableness of fact findings is to be determined on the basis of the entire record. The third case, *Balston-Stillwater Co.* v. *National Labor Relations Board,* 98 F. 2d 758, 760 (C. A. 2), cited and relied upon the *Appalachian Power* and *Thompson* cases. See also, *National Labor Relations Board* v. *Union Pacific Stages,* 99 F. 2d 153, 177 (C. A. 9), in which the court, following the *Appalachian Power* and *Thompson* cases, stated:

> But the courts have not construed this language as compelling the acceptance of findings arrived at by accepting part of the evidence and totally disregarding other convincing evidence.

In the *Columbian* case, after citing the same decisions and quoting from the *Consolidated Edison* case, this Court expressly accepted the jury analogy contained in the Fourth Circuit's decision in the *Appalachian Power* case, saying:

> Substantial evidence * * * must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.

The jury analogy used in the *Columbian* case in amplification of the *Consolidated Edison* formula is an enlightening one. The test applied

in reviewing jury cases has been well stated in *Sandri* v. *Byram,* 30 F. 2d 784, 786 (C. A. 6):

> If, after a survey of the evidence, and after giving effect to every inference to be fairly or reasonably drawn from it in plaintiff's favor, there is no substantial evidence of negligence, the case is one for the judge. But if, *upon a consideration of all the proven facts and circumstances,* together with all proper inferences and deductions therefrom, *reasonable men might fairly differ* upon the vital point as to whether Dickinson was in the exercise of due care, then the question becomes one for the jury. These are elementary principles and need no citations of authority. [Italics supplied.]

See also the decision of the Court of Appeals for the District of Columbia Circuit, speaking through Mr. Justice Rutledge in *Christie* v. *Callahan,* 124 F. 2d 825, 826–827. The other cases cited in the *Columbian* case—*Baltimore & O. R. R. Co.* v. *Groeger,* 266 U. S. 521, 524, and *Gunning* v. *Cooley,* 281 U. S. 90, 93–94—though not quite as explicit as the cases just referred to, also indicate their view that the sufficiency of the evidence supporting a jury's verdict is to be determined on the whole record. The jury analogy invoked in the *Columbian* case is therefore persuasive evidence that the review of administrative findings is of the same character.

That the substantial evidence rule properly interpreted embodied a standard of reasonable-

ness on the whole record was the view advanced before a congressional committee by Dean Stason, who participated in the activities which eventuated in the Administrative Procedure Act. He testified that, although the meaning of substantial evidence had been variously stated:

> One of the intermediate positions, and probably *the most generally accepted meaning* ascribed to the term "substantial evidence" is this: The term "substantial evidence" is construed to confer finality upon an administrative decision on the facts when, *upon an examination of the entire record,* the evidence, including the inferences therefrom, is found to be such that a reasonable man, acting reasonably, might have reached the decision. On the other hand, if a reasonable man, acting reasonably, could not have reached the decision upon the evidence and the inferences therefrom, then the decision is not supported by substantial evidence, and it should be set aside.[17] [Italics supplied.]

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[17] Hearings before Subcommittee of Senate Judiciary Committee on Administrative Procedure, 77th Cong., 1st Sess., S. 674, S. 675, S. 918, p. 1356. Dean Stason has expressed the same thought in substantially the same language in his article "*Substantial Evidence*" *in Administrative Law*, 89 Univ. of Penn. Law Rev. 1026, 1038, and see 1035–1050 (1941), written about the same time. One of the writers of this brief had expressed similar views in an article written before the enactment of the Administrative Procedure Act. Stern, *Review of Findings of Administrators, Judges and Juries*, 58 Harv. L. Rev. 70, 77–78 (1944).

This we think to be an accurate formulation of the rule of the *Consolidated Edison* case, as well as of the test under the new legislation.

Subsequent decisions of this Court have not even intimated that the scope of review was anything different from that stated in the *Consolidated Edison* and *Columbian* cases. The reference to the *Consolidated Edison* case in the prior opinion in the instant case (337 U. S., at 661) shows that the former is still regarded as defining the scope of review under the Wagner Act.

Examination of this Court's decisions demonstrates that it has always looked not merely at a part but at the record as a whole, in determining whether the Board's findings were substantially supported. The statement in *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U. S. 9, 17, that, "We have not confined ourselves to the scope of the Board's view of the case, and have examined all the evidence in the certified transcript, and not merely the evidence set forth in the printed record," establishes this fact beyond a doubt. In the same case, this Court specifically referred to the provision of Section 10 (e) of the Wagner Act which required the Board to certify to the reviewing court "a transcript of the entire record in the proceeding, including the pleadings and testimony." The requirement that the Board certify the entire record to the reviewing court itself establishes

that Congress did not intend to restrict judicial review under the Wagner Act merely to excerpts from the testimony supporting the Board's findings.[18]

Other decisions of this Court, showing that the Court has looked at the record as a whole, are: *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 350 ("the entire evidence, pro and con"); *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 339, 341 ("entire and uncontradicted evidence of record"); *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 588 ("the whole congeries of facts"); *National Labor Relations Board* v. *Virginia Electric & Power Co.*, 314 U. S. 469, 479 ("the whole course of conduct revealed by this record"); *Southern S. S. Co.* v. *National Labor Relations Board*, 316 U. S. 31, 38 ("an examination of the record").[19] Compare, *National Labor Relations Board* v. *Donnelly Garment Co.*, 330 U. S. 219, 237–238. And the *per curiam* decisions of the Court in *National Labor*

[18] The Court noted that (318 U. S. at 13):

"While the Board did not designate all of the testimony for printing, it has certified it all to us, it has stricken no testimony or any witness in question from the record and has made no finding that any specific parts of it were not relied upon."

[19] See also, *National Labor Relations Board* v. *Southern Bell Telephone Co.*, 319 U. S. 50, 58, 59; *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U. S. 793, 800, 801.

Relations Board v. *Automotive Maintenance Machinery Co.*, 315 U. S. 282, and *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105, each stating that upon "examination of the record" the Board's findings were supported by substantial evidence, could not have been intended to change the recognized standard of review, or to intimate that "the record" which was examined was really not the record as a whole but only a part thereof.

National Labor Relations Board v. *Waterman Steamship Corp.*, 309 U. S. 206, and *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, referred to by Dean Stason at the hearing cited above (at pp. 1355–1356), do not manifest any departure from the prevailing rule. The recital of the evidence in each opinion included the testimony of company witnesses. The Board argued in the *Waterman* case that there was "clear and overwhelming proof" of violation (309 U. S., at 208), not that selected portions of the evidence showed a violation. (See also, 309 U. S., at 226.) In the *Bradford* case the Court noted that it had "carefully scrutinized this entire record" (310 U. S., at 343). These cases there re cannot be regarded as departures *sub silentio* from the previous doctrine.[20]

[20] Dean Stason has conceded that "possibly the language in these recent cases is fortuitous rather than indicative of a trend in establishing a new definition of substantial evidence.

Accordingly, it is our view that the test of reasonableness articulated in the *Consolidated Edison* and *Columbian Enameling* cases necessarily required perusal of the record as a whole, and thus was no different from the test contained in the new statutes.

Since, under the rule of the *Consolidated Edison* case, the test was whether the Board's decision was supported by substantial evidence on the record as a whole, as we have shown it was, plainly the new statutes adding those words made no substantive change. This is true even though the amendment may have removed doubt in the minds of some persons who, because of a lack of explicit pronouncement in this Court's opinions and a failure to analyze the cases correctly, were not certain as to the scope of review under the earlier Acts. The fact that the additional words may have clarified the question for those in doubt does not mean that there was a change in the test to be applied. We submit, therefore, that it is clear from the text of the review provisions of the Administrative Procedure Act and the Taft-Hartley Act read in the light of the prior authorities that the scope of review has not been altered.

Everything considered, the interpretation of the earlier cases seems the wiser." Stason, "*Substantial Evidence*" *in Administrative Law*, 89 Univ. of Penna. Law Rev. 1026, 1050 (1941). See also, Davis, *Scope of Review of Federal Administrative Action*, 50 Col. L. Rev. 559, 602.

B. THE LEGISLATIVE HISTORY OF THE NEW STATUTES SHOWS THAT CONGRESS REJECTED BROADER STANDARDS OF JUDICIAL REVIEW

The court below relied on excerpts from the legislative history of the Taft-Hartley Act as proof that a broader review was intended. We believe that an examination of the full history of both of the pertinent statutes will confirm what the text of the law shows, that Congress intended to clarify but not to change the scope of review of Board orders. The legislative history demonstrates that Congress rejected proposals to expand the scope of review by substituting for the substantial evidence rule tests which would have accorded more latitude to reviewing courts. In any event, any ambiguity in the legislative history resulting from the excerpts relied upon by the court below and by respondent are not such as to overcome the fact that the words of the statutes do not depart from the pre-existing rule.

1. THE ADMINISTRATIVE PROCEDURE ACT

The first predecessor of the Administrative Procedure Act was the Logan-Walter bill, passed by Congress but vetoed by the President in 1940.[21] As it passed the House, that bill permitted administrative findings to be set aside if the reviewing court concluded "(1) that the findings of fact are clearly erroneous; or (2) that the findings of fact

[21] H. R. 6324, 76th Cong., 3d Sess., 86 Cong. Rec. 4742–4744, 13748, 13942–13945, 13953.

are not supported by substantial evidence * * *." 86 Cong. Rec. 4669. The "clearly erroneous" clause was deleted by the Senate "on the ground that it would permit courts to review the evidence and substitute their own independent views of the facts * * *,"[22] and the House concurred in the Senate amendment despite objections on the floor.[23] The debate clearly indicates that Congress was aware that the "substantial evidence" test was a narrower one than the "clearly erroneous" rule. See *United States* v. *Gypsum Co.*, 333 U. S. 364, 395; *District of Columbia* v. *Pace*, 320 U. S. 698.

After the veto of the Logan-Walter bill, a minority of the Attorney General's Committee on Administrative Procedure—Messrs. McFarland, Stason and Vanderbilt—reported that "one of the prevalent interpretations of the 'substantial evidence' rule permitted the courts only to look to the evidence on one side of the case," and recommended that "the court should set aside decisions *clearly* contrary to the *manifest* weight of the evidence."[24]

The proposals which eventuated in the Administrative Procedure Act were renewed in 1945.[25]

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[22] *Id.*, at 13676, 13746.

[23] *Id.*, at 13809, 13815–13816.

[24] Final Report of the Attorney General's Committee on Administrative Procedure (1941), pp. 210–211.

[25] Hearings had been held in 1941 at which Dean Stason gave the testimony quoted at p. 54, *supra*.

A draft of the bill was explained to the House Judiciary Committee by Mr. McFarland, the Chairman of the American Bar Association Committee on Administrative Law. In his testimony Mr. McFarland stated:[28]

> The word "substantial" is a perfectly good word. If people do not give it its due weight, that is their fault. I do not think you can improve on that language.
>
> The other rule that is so often discussed is the preponderance-of-evidence rule, or the weight-of-evidence rule. But the difficulty there is that it would cause about as much difficulty as help.
>
> * * * * *
>
> Mr. CRAVENS. I think what we are trying to find out is, in your judgment, based on your experience, is judicial review adequate which is based upon a finding by the reviewing court that there was substantial evidence to support the facts as found by the agency below?
>
> Mr. MCFARLAND. That is right. That does not mean, as we sometimes hear it said, that they look only to certain pages of the record. You might have in the record something which would sustain the judgment; on the other hand, there might

[28] The legislative history of the Administrative Procedure Act has been compiled in Senate Document No. 248, 79th Cong., 2d Sess., copies of which will be made available to the Court. It seems more convenient to cite this document for the history of the statute than to refer to the official citations.

be incontrovertible evidence in the remainder of the record which utterly destroys it. The review must be of the whole record in the sense that any part of the record can be called upon.

Mr. WALTER. What do you think of the scope of review in H. R. 1206, at page 53 of the bill?[27]

Mr. MCFARLAND. *I should say that reflected the present judicial rule.*[28] [Italics supplied.]

The bill reported out by the Senate Committee was in the form in which it finally passed. The Senate Committee Report (S. Report 752, 79th Cong., 1st Sess.) declared with respect to the review provision:

> "Substantial evidence" means evidence which on the whole record is clearly substantial, sufficient to support a finding or conclusion under Section 7 (c), and material to the issues.
>
> * * * * *
>
> The requirement of review upon "the whole record" means that courts may not look only to the case presented by one party, since other evidence may weaken or even indisputably destroy that case.[29]

The Report continued:

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[27] The relevant provisions of Section 10 (e) of H. R. 1206 were substantially the same as those finally enacted. See Sen. Doc. No. 248, 79th Cong., 2d Sess., pp. 8–9, 176.

[28] Sen. Doc. No. 248, 79th Cong., 2d Sess., pp. 85–86.

[29] *Id.*, at p. 214.

> The "substantial evidence" rule set forth in section 10 (e) is exceedingly important. As a matter of language, substantial evidence would seem to be an adequate expression of law. The difficulty comes about in the practice of agencies to rely upon (and of courts to tacitly approve) something less—to rely upon suspicion, surmise, implications, or plainly incredible evidence. It will be the duty of the courts to determine in the final analysis and in the exercise of their independent judgment, whether on the whole record the evidence in a given instance is sufficiently substantial to support a finding, conclusion, or other agency action as a matter of law.[30]

The Senate Report, after noting that the bill had been prepared by representatives both of private parties and private organizations and of the Attorney General, stated that "the Attorney General's favorable report on the bill, as revised, is set forth in Appendix B."[31] In that appendix, the Attorney General stated, "'Section 10 (e): This declares the existing law concerning the scope of judicial review * * *. Clause (5) [the substantial evidence clause] is intended to embody the law as declared, for example, in *Consolidated Edison Co.* v. *National Labor Relations Board* (305 U. S. 197)."[32] Nowhere in

[30] *Id.*, at p. 216.
[31] *Id.*, at p. 191.
[32] *Id.*, at p. 230.

the Committee Report is it intimated that the Committee disagreed with the views expressed by the Attorney General, and it is to be noted that his statement that the scope of review had not been changed, is in substance identical with that of Mr. McFarland, quoted *supra,* pp. 61–62. In a similar situation such a letter from the Attorney General was held to serve "in the absence of contradiction by the report, as an indication of the Committee's opinion on the intended effect of the [Public Vessels] Act." *American Stevedores, Inc.* v. *Porello,* 330 U. S. 446, 452.

The House Committee Report (House Rep. 1980, 79th Cong., 2d Sess.) contains language almost identical with that of the Senate Report, and need not be quoted here.[33]

When the bill was debated on the floor of the Senate, Senator Morse stated that, "As I understand the bill in its present form, it recognizes and approves the substantial evidence rule."[34] Senators Ferguson and George indicated, however, that they thought that the former rule required merely "any evidence" to sustain an administrative decision, and inquired as to whether that was being changed.[35] Senator McCarran, the sponsor of the bill, replied:

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[33] *Id.*, at 279–280.
[34] *Id.*, at 312.
[35] *Id.*, at 321.

> The courts have given various constructions. The courts, in reviewing an order, are governed by the provisions of section 10 (e), *which states the substantial-evidence rule.* In other words, in some instances the courts have held that there must be substantial evidence. We are saying that there must be probative evidence of a substantive nature, and that even though the commission or bureau may take hearsay evidence in its hearings, it must have some probative evidence to sustain its finding.[36] [Italics supplied].

Senator George then stated that in labor relations cases "The circuit courts have frequently complained against what the Labor Relations Board did, but have said, 'We are powerless to interfere with it.' Would this bill change that rule, if the court were of the opinion that there was no probative evidence?"[37] Senator McCarran's affirmative reply obviously means no more than that if there was no probative evidence the courts could, under the new law, set aside the Board's order. This was always the rule, however, as applied by this Court, among others. To the extent that any court of appeals had erroneously conceived of the substantial evidence rule as barring reversal of Board findings which are unsupported by substantial probative evi-

[36] *Id.*, at 321.
[37] *Id.*, at 322.

dence, the rule as applied by those courts would, *pro tanto,* be changed.

The provisions in question were also discussed on the floor of the House,[38] where a similar misconception that the substantial evidence rule required affirmance of administrative findings which were based only upon a scintilla of evidence or mere hearsay, rumor, speculation and inference led sponsors of the Act to assert that it would effect a change in the scope of review. See, *e. g.,* statement of Congressman Walter,[39]

[38] *Id.*, at 375–378.

[39] *Id.*, at 370:

"The term 'substantial evidence' as used in this bill means evidence which on the whole record as reviewed by the court and in the exercise of the independent judgment of the reviewing court is material to the issues, clearly substantial, and plainly sufficient to support a finding or conclusion affirmative or negative in form under the requirements of section 7 (c) heretofore discussed. Under this section the function of the courts is not merely to search the record to see whether it is barren of any evidence, or lacking any vestige of reliable and probative evidence, or supports the agency action by a scintilla or by mere hearsay, rumor, suspicion, speculation, and inference—cf. *Edison Co.* v. *Labor Board* (305 U. S. 197, 229–30). Under this bill it will not be sufficient for the Court to find, as the late Chief Justice Stone pointed out within the year, merely that there is some 'tenuous support of evidence'—*Bridges* v. *Wixon* (326 U. S. at 178). Nor may the bill be construed as permitting courts to accept the judgments of agencies upon unbelievable or incredible evidence.

* * *

"Whether a court is proceeding upon an administrative or a judicial record, the requirement of review upon the whole record means that courts may not look only to the

and colloquy between Congressmen Voorhis and Gwynne.[40]

It is clear from the above history of the Administrative Procedure Act that the basic substantial evidence rule was not being changed. Congress intended to make it clear that the courts were not to limit themselves to looking at the evidence on one side of the case. And some Congressmen, who did not fully understand the meaning of the rule as enunciated and applied by this

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case presented by one of the parties but must decide upon all of the proofs submitted."

[40] *Id.*, at 375:

"Mr. VOORHIS of California. On the matter of court review, I wanted to ask the gentleman whether the bill will or will not make a change in the situation which now pertains as to certain agencies where, if the position of that agency is supported by any degree of reasonable evidence, the court must not go beyond that decision? Does not the bill give the court somewhat broader powers from that point of view than it would have otherwise?

"Mr. GWYNNE of Iowa. Right.

"Mr. VOORHIS of California. Would the gentleman expand on that a little bit? I think it is very important.

Mr. GWYNNE of Iowa. I might say rather briefly that there are two conflicting theories that have often been expounded by the courts. One is that if the verdict of the jury or if the finding of the triers of fact is sustained by a scintilla of evidence, any evidence, no matter how lacking in probative force, the court must sustain it. The other is that the court need not sustain a finding unless it is supported by substantial evidence. The latter is the view adopted in this bill.

Mr. VOORHIS of California. That is a change from the practice that is now in effect in regard to some agencies, is it not?

Mr. GWYNNE of Iowa. That is correct."

Court and by the courts of appeals, thought that this meant that the rule was being altered. But the text of the statute, as well as the explanation of one of its principal draftsmen, Mr. McFarland, together with the history as a whole, shows that Congress was removing any possible uncertainty as to the meaning of the substantial evidence rule, but not changing the rule itself.

2. The Labor Management Relations Act, 1947

As has been noted, the Labor Management Relations Act, enacted in 1947, merely repeated the substance of the Administrative Procedure Act by requiring that "The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive." On its face this language is indistinguishable in meaning from that of the Administrative Procedure Act.

The bill as it was reported to and passed the House, however, went considerably further; it provided that the Board's findings should be conclusive unless they were "against the manifest weight of the evidence, or * * * not supported by substantial evidence."[41] Even as to this provision, which was not finally adopted, the House Report stated: "Although many have urged that the courts be authorized to modify and set aside findings of the Board when they were against the simple weight of the evidence, the committee believes that with a new and *impartial* Board, trials *de novo* in the courts will not be

[41] *Legislative History of the Labor Management Relations Act, 1947*, at 71, 198.

required."[42] The House debate on this provision shows that it was realized that the House bill would have materially broadened the scope of judicial review.[43]

The Senate did not accept the House proposal. The history of the provision relating to scope of review in the Senate is most illuminating. Senator Morse, a member of the Senate committee from which the bill was reported, in reviewing "the legislative history of the provisions of the committee bill" stated on the floor of the Senate that an early committee print of the bill would have authorized "reviewing courts to determine whether Board findings were in accordance with the weight of the evidence."[44] A subsequent committee print would have provided that " 'the findings of the Board with respect to questions of fact and law shall be accorded the same degree of conclusiveness as the findings of a United States district court' ", which "would have been to adopt the so-called clearly erroneous test of judicial review, substantially the same as now provided in rule 52 of the Federal Rules of Civil Procedure."[45] This also was rejected by the committee. Senators Morse and Ives urged that "the present rule as contained in the Administrative Procedure Act be retained," and the words "on

[42] *Id.*, at 332–333.
[43] *Id.*, at 697, 883, 910.
[44] *Id.*, at 1504.
[45] *Id.*, at 1504–1505.

the record considered as a whole" were added to conform to the provision of the Procedure Act.[46] The bill was reported in the form approved by Senator Morse, although a supplemental report submitted by Senators Taft, Ball, Donnell, Jenner, and Smith, indicated that they would have preferred the stronger language which the committee as a whole rejected.[47] The Senate Report itself states:

> Sections 10 (e) and 10 (f), relating to enforcement and review in the various circuit courts of appeal and in the Supreme Court, contain no changes in existing law, except with regard to the weight given to findings of the Board by the reviewing tribunal. Under the present act, the Board's findings of fact, if supported by evidence, are deemed to be conclusive. This has been construed by the Supreme Court as meaning "substantial evidence." Nevertheless, there has been some dissatisfaction with what has been viewed as too great a tendency on the part of the courts not to disturb Board findings, even though they may be based on questions of mixed law and fact (*N. L. R. B.* v. *Hearst Publications,* 322 U. S. 111; 102 F. (2d) 658), or inferences based on facts which are not in the record (*Republic Aviation* v. *N. L. R. B.*, 324 U. S. 793, and *LeTourneau Company* v. *N. L. R. B.*, 324 U. S. 793).

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[46] *Ibid.*

[47] *Id.*, at 456.

> Although considerable sentiment was expressed in committee for a rule which requires the courts to support Board orders, unless contrary to the weight of the evidence, **it was finally decided to conform the statute to the corresponding section of the Administrative Procedure Act where the substantial evidence test prevails. In order to clarify any ambiguity in that statute,** however, the committee inserted the words "questions of fact, if supported by substantial evidence *on the record considered as a whole.* * * *"[48] [Black lettering supplied, italics in original.]

The report of the minority of the committee (which had combined with Senators Morse and Ives to form the majority on this question) stated that:

> The instant bill is designed to bring the language of the National Labor Relations Act into strict conformity with the Supreme Court's decision [in the *Consolidated Edison* case] and the Administrative Procedure Act's requirements.
>
> Our difficulty with this proposal results from the fact that we fear the changes in language will invite litigation concerning its true meaning.[49]

Thus both the majority and the minority of the committee stated that the scope of review was

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[48] *Id.*, at 432–433.

[49] *Id.*, at 500.

to be the same as in the Administrative Procedure Act.

In the debate on the floor of the Senate, Senator Taft, who had favored a broader review, accurately stated the effect of the committee proposal as follows:

> In the first place, the evidence must be substantial; in the second place, it must still look substantial when viewed in the light of the entire record. That does not go so far as saying that a decision can be reversed on the weight of the evidence. It does not go quite so far as the power given to a circuit court of appeals to review a district-court decision, * * *.[50]

Senator Taft then proceeded to say that this—

> goes a great deal further than the present law, and gives the court greater opportunity to reverse an obviously unjust decision on the part of the National Labor Relations Board.[51]

This last remark, we submit, is not consistent with the views of those who, over Senator Taft's opposition, were responsible for the language of the review provision, and also manifests a misconception as to the scope of review under the pre-existing rule. Our position is strongly supported by Senator Morse, who was responsible for the language contained in the bill, and who sub-

[50] *Id.*, at 1014.

[51] *Ibid.*

sequently stated upon the floor of the Senate that although Senator Taft was correct in defining the scope of review, "the test of review" did not differ from that applied "to the findings of other administrative agencies as provided for in Administrative Procedure Act." [52] See pages 69–70, *supra.*

In the conference committee, the House proposal for changing the scope of judicial review was rejected and the Senate proposal adopted. In his explanation of the conference decision as to this provision, Senator Taft again expressed the erroneous opinion that the Senate bill "gave additional authority to the courts in review of Board cases." [53] He also pointed out that "the House bill adopted a weight of evidence test in court review," but that the Senate conferees had "insisted" on the Senate proposal.[54]

[52] *Id.*, at 1504–5.

[53] *Id.*, at 1542.

[54] *Ibid.* Senator Taft's statement was as follows:

"* * * The House bill adopted a weight of evidence test in court review and provided that Board proceedings, so far as practicable, be conducted in accordance with the rules of evidence applicable in United States district courts. The Senate bill left unchanged the existing law with respect to the conduct of Board hearings, but gave additional authority to the courts in review of Board cases by providing that the Board findings must be supported by substantial evidence on the record considered as a whole to be conclusive. Widespread abuse of its latitude in admitting evidence was prevalent in the early history of the Board. It is the current practice of the Board in its hearings generally to follow the rules of evidence prevailing in the courts. Therefore,

The Report of the House conferees does not give quite the same impression as the language of the bill or its history before the Senate. The Report states:

> * * * While the Administrative Procedure Act is generally regarded as having intended to require the courts to examine decisions of administrative agencies far more critically than has been their practice in the past, by reason of a conflict of opinion as to whether it actually does so, a conflict that the courts have not resolved, there was included, both in the House bill and the Senate amendment, language making it clear that the act gives to the courts a real power of review. [*Id.*, at 560.]

Although this may imply that the new bill was intended to allow a broader scope of review than the Administrative Procedure Act, the history of the bill in the Senate shows that the scope of review was meant to be the same, and, in fact, the language was almost identical with that found in the Administrative Procedure Act. The House Conference Report then continued:

> The Senate amendment provided that the Board's findings with respect to questions of fact should be conclusive if supported by substantial evidence on the record con-

the Senate conferees were agreeable to the adoption of the House language with respect to the conduct of Board proceedings but insisted that the Senate rule on court review be accepted as the conference agreement."

sidered as a whole. The provisions of section 10 (b) of the conference agreement insure the Board's receiving only legal evidence, and section 10 (c) insures its deciding in accordance with the preponderance of the evidence. These two statutory requirements in and of themselves give rise to questions of law which the courts will hereafter be called upon to determine—whether the requirements have been met. This, in conjunction with the language of the Senate amendment with respect to the Board's findings of fact—language which the conference agreement adopts—will very materially broaden the scope of the courts' reviewing power. *This is not to say that the courts will be required to decide any case de novo themselves weighing the evidence, but they will be under a duty to see that the Board observes the provisions of the earlier sections that it does not infer facts that are not supported by evidence or that are not consistent with evidence in the record, and that it does not concentrate on one element of proof to the exclusion of others without adequate explanation of its reasons for disregarding or discrediting the evidence that is in conflict with its findings.* The language also precludes the substitution of expertness for evidence in making decisions. It is believed that the provisions of the conference agreement relating to the courts' reviewing power will be adequate to preclude such decisions as those in *N. L. R. B.* v. *Nevada Consol. Copper Corp.* (316

> U. S. 105) and in the *Wilson, Columbia Products, Union Pacific Stages, Hearst, Republic Aviation,* and *LeTourneau,* etc., cases, *supra,* without unduly burdening the courts. The conference agreement therefore carries the language of the Senate amendment into section 10 (e) of the amended act.[55] [Italics supplied.]

Whether the above statement is correct in saying that the scope of review is broadened, depends, in part, upon what the test was before the new Act was passed. For reasons already stated, we think that it was not as narrow as many members of Congress believed.

3. Other Provisions in the Statutes Do Not Affect the Scope of Judicial Review

It is significant that the Committee's conclusion that the scope of review is broadened—like that of the court below—rests in large part not upon the Committee's interpretation of the language of Section 10 (e), which defines the standard of judicial review, but upon provisions in Section 10 (b) and (c), which deal not with judicial review but with Board procedure. To regard those provisions as affecting the standard of judicial review set forth in Section 10 (e) would result in nullifying the deliberate action of Congress in retaining the substantial evidence rule and rejecting broader proposals. Thus, the Committee states that the requirement in the new Section 10 (c) that the Board decide "in accordance with the preponder-

[55] *Id.*, at p. 560.

ance of the evidence," will of itself "give rise to questions of law which the courts will hereafter be called upon to determine—whether the requirements have been met." If this means that the reviewing court is to determine whether the Board's decision is supported by the preponderance of the evidence, it would be inconsistent not only with the statement in the italicized sentence of the Committee Report (quoted on p. 75, *supra*) that the courts will not themselves weigh the evidence, but with the language of the Act and almost everything else in its legislative history. The Company, which placed heavy reliance upon this passage in the Committee Report in the court below, seemed to admit that the statute does not contemplate that the reviewing court is to examine or weigh the evidence *de novo,* substituting its judgment on the weight of the evidence for that of the Board (Br., pp. 20, 28). But the Company also urged, in the same sentences, that it is the function of the reviewing court to determine whether the agency's findings are "supported by a preponderance of *all* of the evidence in the record" (Br., p. 20), that *"all of the testimony in the record shall be weighed* to determine whether that which supports the Board's findings is or is not preponderant" (Br., p. 28). [Italics not ours.] As we pointed out to the court below, the concession and the assertion seem to be basically inconsistent. To determine whether the Board's findings are supported

by a preponderance of the evidence is the same as weighing the evidence *de novo*.

The passage referred to, therefore, must mean that a reviewing court may overturn a Board finding if it appears that the Board, in its process of decision, has not applied the standard of preponderance of the evidence. This, we submit, would always have been ground for reversal. The Board has always assumed that it was bound to decide cases upon the basis of the preponderance of the evidence before it.[56]

Similarly, the courts have always been empowered to reverse the Board when it excluded material evidence or placed reliance upon evidence which was inadmissible. *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U. S. 9, 28; *Jacobsen* v. *National Labor Relations Board*, 120 F. 2d 96, 100–101 (C. A. 3); *Humble Oil Co.* v. *National Labor Relations Board*, 113 F. 2d 85, 90 (C. A. 5); *Loveman, Joseph & Loeb* v. *National Labor Relations Board*, 146 F. 29, 769, 772 (C. A. 5); *Burlington, D. & F. Co.* v. *National Labor Relations Board*, 104 F. 2d 736, 739

[56] The Board in one of the first of the five test cases which came before the Supreme Court indicated that it assumed the burden of proof in cases before it. In its brief in *Washington, Virginia and Maryland Coach Co.* v. *National Labor Relations Board*, 301 U. S. 142, it stated (br., pp. 22–23, filed Feb. 1937): "Of course the Board carries the burden of proof in the administrative proceedings, and did so in this case." See also the Board's *First Annual Report*, 1936, p. 23; and the Board's *Statement of Procedure*, 1946, 11 F. R. 14240, sec. 202.9.

(R. A. 4). Cf. *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 222–226. See also, *Reilly* v. *Pinkus*, 338 U. S. 269, 275–277. While the new Section 10 (b) requires that Board proceedings "be conducted in accordance with the rules of evidence applicable in the district courts of the United States," and thereby perhaps imposes more rigid restrictions upon the conduct of hearings, this provision does not of itself expand the scope of review but at most alters the substantive law applied initially by the Board and on review by a court in determining the propriety of the Board's exclusion of or reliance upon certain evidence.

The court below also relied on Section 7 (c) of the Procedure Act, which directs administrative agencies generally to decide cases "in accordance with the reliable, probative, and substantial evidence." Indeed, the statement in the opinion that the court was called upon to determine whether the Board's finding was supported by the "reliable, probative, and substantial evidence" establishes that the court below conceived of Section 7 (c) as directly defining the scope of judicial review. But this provision, clearly, defines and applies to the functions of the Board in making decisions initially; it does not define and is inapplicable to the functions of the reviewing court. The functions of the latter, as the language of the statute demonstrates, and as all other courts have held, are defined exclu-

sively in Section 10 (e) of the two statutes; and these Sections restrict the reviewing courts to determining whether the Board's findings are supported by substantial evidence on the record considered as a whole.[57]

Summary and conclusions.—In brief, the history of the review provisions of the Administrative Procedure and Labor Management Relations Acts shows that, when the former was passed, its draftsmen recognized that the scope of review was not being changed, but only clarified to resolve the doubts held by some persons as to whether the substantial evidence test required examination of the record as a whole. That this was all that was done appears plainly when the

[57] If it be assumed that the scope of review has been broadened by the indirect method suggested in the report of the House Committee discussed above, then the "expanded" scope of review would have no application in the instant case. For the suggested expansion derives from the application of Section 10 (b) and (c) of the new Act, which are procedural amendments relating to Board hearings and the Board's decisional process. Such amendments as we have shown above, Point I, *supra*, are effective only as to procedural steps taken after enactment of the amendments and hence can have no application in this case, since the Board proceedings were completed and its decision issued before enactment of the new law. Thus, if the new power of a court to reverse the Board for failing to apply the rules of evidence applicable in a district court were deemed to expand the scope of review, this power could not properly be exercised in a case decided by the Board prior to the amendments, since the Board could not be held to have erred in failing to observe procedural requirements not yet enacted by Congress.

language of the Act is compared to the test previously applied by this Court in reviewing administrative decisions. The Labor Management Relations Act in terms unquestionably adopts the same rule as the Administrative Procedure Act. The history of the later statute shows that the majority of the Senate Committee which was responsible for the language contained in the Act intended that the rule under the two statutes be the same, and succeeded in defeating proposals by the House and a minority of the Senate Committee containing language which would clearly have had the effect of enlarging the scope of review.

In the light of this background, subsequent statements made by the House conferees and a member of the minority of the Senate Committee on this point to the effect that the scope of review was enlarged can hardly be sufficient to give the statute a meaning which its text will not support. In the words of a recent commentator, "If the LMRA made any change, however, it must have been brought about by the Act's legislative history, not by its words. But it is a curious argument that enactment of words already enacted can produce a change on account of legislative history perpetrated by those who lack power to enact words not already enacted. If the proponents of a broader scope of review had had the power, they would have amended the statute to provide for it. But the fact is that Congress

resisted that effort." [58] It cannot be doubted that a number of members of Congress thought that the scope of review was being broadened. But this resulted from the fact that they were not fully familiar with or had not properly analyzed the decisions of this Court and of the courts of appeals,[59] and thus incorrectly assumed that the prior scope of review was narrower than it really was. This mistaken impression, however, obviously does not provide an adequate basis for giving an expanded meaning to the expressions used.

We submit that the legislative history of the Acts as a whole serves merely to confirm our argument based upon their text that the scope of review has not been changed. But, if the expressions to the contrary to which we have referred

[58] Kenneth Culp Davis, *Scope of Review of Federal Administrative Action*, 50 Columbia Law Review 559, 563 (1950).

[59] The Conference Report had referred to the following decisions as indicating that the courts had "abdicated" to the Board: *National Labor Relations Board* v. *Standard Oil Co.*, 138 F. 2d 885, 887 (C. A. 2) (in which the word "abdication" was used in a narrower context); *Wilson & Co.* v. *National Labor Relations Board*, 126 F. 2d 114, 117 (C. A. 7) (which implies that "some evidence" may be a sufficient basis for supporting a Board order); *National Labor Relations Board* v. *Columbia Products Corp.*, 141 F. 2d 687, 688 (C. A. 2) (which accepts the "rational person" test); *National Labor Relations Board* v. *Union Pacific Stages*, 99 F. 2d 153 (C. A. 9) which, as appears from the opinion as a whole and the excerpt from p. 177, quoted at p. 52, *supra*, plainly holds that the courts look at the whole record in determining whether the Board's findings are supported by substantial evidence).

should be given more weight than we think they are entitled to, the most that could be said would be that "the legislative history is more conflicting than the text is ambiguous". *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, 49. Ambiguous or confusing legislative history cannot be controlling in statutory interpretation when the meaning of the words of the statute is plain.

C. THE DECISION BELOW IS CONTRARY TO THE VIEW OF SEVEN OTHER COURTS OF APPEALS

1. Decisions Under the Taft-Hartley Act

For the reasons set forth in the preceding paragraphs, every court of appeals—seven in all—with the exception of the court below, which has had occasion to consider the effect of the amendment to Section 10 (e) has concluded that it did not change the substantial evidence rule in any respect. *Eastern Coal Corp.* v. *National Labor Relations Board*, 176 F. 2d 131, 134–136 (C. A. 4); *National Labor Relations Board* v. *Universal Camera Corp.*, 179 F. 2d 749, 751–752 (C. A. 2), pending on writ of certiorari, No. 40, this Term; *National Labor Relations Board* v. *Booker*, 180 F. 2d 727, 729 (C. A. 5); *National Labor Relations Board* v. *LaSalle Steel Co.*, 178 F. 2d 829, 833–834 (C. A. 7), certiorari denied, 339 U. S. 963; *National Labor Relations Board* v. *Minnesota Mining & Mfg. Co.*, 179 F. 2d 323, 325–326 (C. A. 8); *National Labor Relations Board* v. *Continental Oil Co.*, 179 F. 2d 552, 555 (C. A.

10); see *Mueller Brass Co.* v. *National Labor Relations Board*, 180 F. 2d 402, 405 (C. A. D. C.), citing the *Eastern Coal* case.[60] See also *National Labor Relations Board* v. *Crompton-Highland Mills*, 337 U. S. 217, 220, n. 4.

In the language of the courts of appeals:

> "By these changes Congress may have intended to broaden the scope of judicial

[60] Earlier decisions of the Fifth and Seventh Circuits, shortly after passage of the amended Act, did not go so far as to state that the amendment had not altered the substantial evidence rule in any way, although they left no doubt that a reviewing court was still not permitted to engage in a trial *de novo*. *National Labor Relations Board* v. *Caroline Mills, Inc.*, 167 F. 2d 212, 213 (C. A. 5); *National Labor Relations Board* v. *Austin Co.*, 165 F. 2d 592, 595 (C. A. 7); see also *National Labor Relations Board* v. *Victor Mfg. Co.*, 174 F. 2d 867, 868 (C. A. 7). In the *Caroline Mills* case the Court of Appeals for the Fifth Circuit said that the amendments "give the courts more latitude on review" but that "They do not, however, provide for a hearing *de novo* * * *." The question had not been extensively briefed or argued in that case, and whatever ambiguity may have lurked in the language quoted has since been dispelled by that court's decision in the *Booker* case, 180 F. 2d 727, 729, where, after quoting the pertinent provisions of Section 10 (e) in both the old and the amended Act, the court concluded: "Thus there is no difference in legal meaning and practical effect between the two statutes. *National Labor Relations Board* v. *Columbian, etc. Co.*, 306 U. S. 292, 299." The reference to the *Columbian* case establishes that the Fifth Circuit, unlike the court below, reads the amendatory language of the Act as merely codifying the existing substantial evidence rule. The recent decision of the Seventh Circuit in the *LaSalle Steel* case, cited in the text, likewise makes it perfectly clear that that court also holds the substantial evidence rule to have been unchanged.

review and confer power upon the courts to review the board's findings of fact as well as conclusions of law. If it had such an intent, it failed in the result. The amendments limit the review to a determination as to whether or not, considering the record as a whole, there is substantial evidence to sustain the finding. So far as review is concerned, this leaves us in the same status as before the amendments." *National Labor Relations Board* v. *Continental Oil Co.*, 179 F. 2d 552, 555 (C. A. 10).

"* * * It is true that there were efforts, especially in the House, to give to courts of appeal a wider review than before; but the Senate opposed these, and, so far as concerns the adjective, 'substantial,' it added nothing to the interpretation which the Supreme Court had already put upon the earlier language. The most probable intent in adding the phrase, 'on the record considered as a whole,' was to overrule what Congress apparently supposed—perhaps rightly—had been the understanding of some courts: i. e., that, if any passage could be found in the testimony to support a finding, the review was to stop, no matter how much other parts of the testimony contradicted, or outweighed, it. * * * It appears to us that, had it been intended to set up a new measure of review by the courts, the matter would not have been left so at large. We cannot agree that our review has been 'broadened'; we hold that no more was done than to make defi-

nite what was already implied." *National Labor Relations Board* v. *Universal Camera Corp.*, 179 F. 2d 749, 752 (C. A. 2).

"These changes as the Committee Reports clearly show, were inspired by the dissatisfaction of Congress with decisions of the Board in certain cases and with the inability of the courts to correct them; and it was believed by some persons that the new Act broadened the scope of judicial review and conferred upon the courts power to correct mistakes committed by the Board in its findings of fact as well as in its conclusions of law. We are unable, however, to find that this result was accomplished. See *N. L. R. B.* v. *Austin Co.*, 7 Cir., 165 F. 2d 592, 595; *N. L. R. B.* v. *Compton-Highland Mills, Inc.*, 69 S. Ct. 960. That the Board was cautioned to observe the usual rules of evidence and to consider the whole record and to base its findings upon the preponderance of all of the evidence is undeniable; and the courts themselves were directed to determine whether the Board's findings of fact were supported by substantial evidence in the record considered as a whole. But findings so supported are still conclusive upon the courts since the critical words selected by Congress for the guidance of the courts are the existence of 'substantial evidence' to support the Board's findings and these are the same words which the Supreme Court has defined in this very context to

> mean 'such relevant evidence as a reasonable man might accept as adequate to support a conclusion.' *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 229; *N. L. R. B.* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 300. * * *
>
> "Our conclusion is that although the Board is warned to decide labor controversies upon the whole record and in accordance with the preponderance of the evidence, the court in reviewing the decisions is not empowered to weigh one bit of evidence against another with a view of determining which it will accept as true or to substitute its judgment for that of the Board in determining what ultimate facts are established by the circumstances in evidence. The court reviews the findings of the Board as it reviews the findings of a jury on a motion n. o. v., that is to say, the findings, like the verdict, must stand if there is substantial evidence in the record to support them." *Eastern Coal Corp.* v. *National Labor Relations Board*, 176 F. 2d 131, 134–6 (C. A. 4).[61]

In reaching the contrary conclusion that the scope of review was broadened by the Taft-Hartley Act the court below relied upon its own prior decision in *National Labor Relations Board*

[61] The court at this point referred to and quoted from its earlier decision in its *Appalachian Power* case, 93 F. 2d 985, approved by this Court in the *Consolidated Edison* and *Columbian Enameling* case, referred to herein at pp. 51–52, *supra*.

v. *Tappan Stove Co.*, 174 F. 2d 1007, 1008. In the *Tappan Stove* case the court had stated that the Labor Management Relations Act "merely broadened the Wagner Act to the extent that the findings of fact of the National Labor Relations Board must now be based upon substantial evidence rather than upon evidence unqualified by the adjective 'substantial'; and that determination of issues of fact must be reached upon consideration of the record as a whole." However, in the *Thompson Products* case, 97 F. 2d 13, 15, discussing the substantial evidence rule as it existed under the Wagner Act, the court below had earlier held that Board orders must be enforced "unless clearly improper or unsupported by substantial evidence" and that substantial evidence required "consideration [of] all the facts * * * in their entirety and relation to each other." In the *Columbian Enameling* case, *supra,* this Court had adverted to the *Thompson Products* formulation of the rule with approval. There would thus seem to be no distinction in meaning between the allegedly "broader" rule stated in the *Tappan Stove* case and the substantial evidence rule laid down by the court below under the Wagner Act. Furthermore, an examination of the cases decided by the court below prior to the adoption of the new statutes establish that that court never interpreted this Court's decisions as requiring it to

look at only part of the record instead of considering all the evidence.[62]

These cases, and the similarity of language used in the *Tappan Stove* case (which in effect quotes the statute) with that in the *Thompson Products* case, indicate that the court below was in error

[62] See, for example, *National Labor Relations Board* v. *Thompson Products, Inc.*, 130 F. 2d 363, 368, where the court below had stated, "We have examined the record with care." See also, *National Labor Relations Board* v. *Sands Mfg. Co.*, 96 F. 2d 721, 724, 726, affirmed, 306 U. S. 332; *National Labor Relations Board* v. *Empire Furniture Corp.*, 107 F. 2d 92, 94–96; *Midland Steel Products Co.* v. *National Labor Relations Board*, 113 F. 2d 800, 802, 805; *National Labor Relations Board* v. *Ford Motor Co.*, 114 F. 2d 905, 915, certiorari denied, 312 U. S. 689; *Ohio Power Co.* v. *National Labor Relations Board*, 115 F. 2d 839, 841; *Atlas Underwear Co.* v. *National Labor Relations Board*, 116 F. 2d 1020, 1022; *National Labor Relations Board* v. *Dow Chemical Co.*, 117 F. 2d 455, 457, 458; *National Labor Relations Board* v. *Newberry Lumber Co.*, 123 F. 2d 831, 833–834; *National Labor Relations Board* v. *Precision Castings Co.*, 130 F. 2d 639, 643; *National Labor Relations Board* v. *Ohio Calcium Co.*, 133 F. 2d 721, 727–728; *National Labor Relations Board* v. *American Creosoting Co.*, 139 F. 2d 193, 196–197; *National Labor Relations Board* v. *Clinton Woolen Mfg. Co.*, 141 F. 2d 753, 758; *National Labor Relations Board* v. *Grieder Machine Co.*, 142 F. 2d 163, 166, certiorari denied, 323 U. S. 724; *National Labor Relations Board* v. *Brown-Brockmeyer Co.*, 143 F. 2d 537, 542; *National Labor Relations Board* v. *Cincinnati Chemical Works*, 144 F. 2d 597, 598–599; *National Labor Relations Board* v. *Ridge Tool Co.*, 151 F. 2d 947, 948; *National Labor Relations Board* v. *West Kentucky Coal Co.*, 152 F. 2d 198, 202, certiorari denied, 328 U. S. 866; *National Labor Relations Board* v. *Metal Mouldings Corp.*, No. 9302, unreported, decided April 6, 1943.

in believing that the substantial evidence rule which the new Act established was "broader" than the one it had always applied under the Wagner Act. Cf. *National Labor Relations Board* v. *Donnelly Garment Co.*, 330 U. S. 219, 227.

2. Decisions Under the Administrative Procedure Act

In holding that the Administrative Procedure Act created a new and broader substantial evidence rule[63] the court below likewise stands alone among the courts of appeals. Every other court of appeals which has considered the question has held that in the Administrative Procedure Act Congress did no more than codify the substantial evidence rule as previously enunciated by this Court in the *Consolidated Edison* case. *National Labor Relations Board* v. *Minnesota Mining & Mfg. Co.*, 179 F. 2d 323, 325–326 (C. A. 8); *Willapoint Oysters* v. *Ewing*, 174 F. 2d 676, 685 (C. A. 9), certiorari denied, 338 U. S. 860; *National Labor Relations Board* v. *National Plastic Products Co.*, 175 F. 2d 755, 760 (C. A. 4); *Delta Stevedoring Co.* v. *Henderson*, 168 F. 2d 872, 873, 874 (C. A. 5); cf. *Anderson* v. *Comm'r of Internal Revenue*, 164 F. 2d 870, 874 (C. A. 7). In the *Minnesota Mining & Mfg.* case, the Eighth

[63] The court below has so held not only in the instant case but also in *Lincoln Electric Co.* v. *Comm'r of Internal Revenue*, 162 F. 2d 379, 382.

Circuit stated with regard to both statutes here involved (179 F. 2d, p. 326):

> We think that neither of the Acts referred to has made any material change in the scope of review of the orders of the Board or in its functions as a trier of the facts. A decision of a court, a jury, or an administrative agency, which is unsupported by substantial evidence, is, of course, arbitrary and capricious and may always be set aside on review; but, if the decision has a rational and substantial basis in the evidence and the law, it may not be nullified by a reviewing court, even though that court is of the opinion that it would have reached a different conclusion had it tried the case.

As the Ninth Circuit stated in the *Willapoint Oysters* case (174 F. 2d at 685):

> We do not view this particular directive, § 1009 (e), as one requiring us to go beyond the limits now generally recognized under the so-called "substantial evidence" rule, or to weigh evidence and substitute our own judgment for that of the administrative agency.

The language and legislative history of the Act, discussed above, clearly establishes, we believe, that this view, rather than that of the court below, is correct.

III

THE COURT BELOW ERRED IN SETTING ASIDE THE BOARD'S ORDER EVEN IF THE SCOPE OF REVIEW HAS BEEN CHANGED

A. THE COURT BELOW DISREGARDED THE LAW OF THE CASE AS ESTABLISHED BY THIS COURT'S DECISION

If, as we have shown above, the scope of review has not been broadened, the prior holding of this Court that the Board's findings are supported by substantial evidence under the test of the *Consolidated Edison* case must be considered the law of the case. *United States* v. *United States Smelting Co.*, 339 U. S. 186, 198, and cases cited. Even assuming that prior to the new Act some courts in applying the substantial evidence rule did not review the record as a whole, and that as to these courts the rule has *pro tanto* been changed, that change would be of no consequence in this case, since this Court has always reviewed the record as a whole. See pages 55–58 *supra*.

In addition, this Court's statement, made after "careful scrutiny of the record," that "the printed transcript suggests thoughtful and discriminating evaluation of the facts," leaves no doubt that it did not arrive at the conclusion that the Board's findings were supported by substantial evidence merely upon the basis of a one-sided examination of the evidence. Moreover, assuming *arguendo* that in some respects the

scope of review has changed, the conclusion of the court below that, considering the record as a whole, no reasonable person could have made the findings which were made by the Board, is, as we shall show (p. 98, *infra*), inconsistent with this Court's opinion.

Particularly is this true with respect to the holdings of the court below, discussed *infra*, pp. 97–114, that testimony of various witnesses, credited by the Board, should have been discredited, and the testimony of other witnesses, discredited by the Board, should have been believed. For in its opinion this Court passed upon these precise contentions, holding that "our attention has been called to no credited testimony which 'carries its own death wound,' and to none discredited which 'carries its own irrefutable truth.'" (337 U. S., at 660.) Since the rules for determining the credibility of witnesses are the same in any sort of judicial proceeding, it is apparent that this Court was not "left with the definite and firm conviction that a mistake has been committed" (*United States* v. *Gypsum Co.*, 333 U. S. 364, 395), insofar as the Board's resolution of conflicting testimony was concerned.[64] Thus, even if the test under an allegedly enlarged scope of review is the same

[64] Cf. *United States* v. *Yellow Cab Co.*, 338 U. S. 338, 342; *United States* v. *National Ass'n of Real Estate Boards*, 339 U. S. 485, 495–496.

as the one applied under the "clearly erroneous" rule (see *supra*, p. 69), the court below could not, consistently with this Court's opinion, reverse the Board's findings as to credibility of witnesses, and substitute contrary findings of its own.

The court below, we submit, violated the terms of the remand by its holdings, discussed *infra*, pp. 119–143, that the Company's instructions to its supervisors to remain neutral relieved it of responsibility for their acts of interference and coercion; that the absence of evidence relating to unfair labor practices on 66 ships established that on these ships no unfair labor practices were committed; and that the Company had therefore not been shown to have engaged in a course of conduct violative of Section 8 (1) of the Act. These precise contentions as to the law had been presented unsuccessfully to this Court; indeed these the points were emphasized in the briefs and argument for respondent when the case was here in 1949. On these points, which are not evidentiary but legal, it has not even been suggested that the applicable principles of law were changed by the amended Act.

B. THE COURT BELOW APPLIED AN ERRONEOUS STANDARD IN REVIEWING THE BOARD'S FINDINGS OF FACT

Except by quoting the statutory language, the court below did not attempt to define the new

"broadened" substantial evidence rule which it found applicable to the case. Compare, *National Labor Relations Board* v. *Thompson Products, Inc.*, 97 F. 2d 13, 15 (C. A. 6). However, an analysis of the court's discussion of the factual issues (see *infra*, pp. 97 *et seq.*) establishes that the "failure to enforce the Board's order resulted from the substitution of its own judgment on disputed facts for the Board's judgment." *National Labor Relations Board* v. *Waterman S. S. Corp.*, 309 U. S. 206, 226.

Even assuming that the scope of review has been broadened by the words "upon the record as a whole", we submit that the new Acts have not reversed the rule laid down by this Court in the *Waterman Steamship* case, 309 U. S., at 208–209, 226, that the power to reverse the Board's judgment on disputed facts "has been denied the courts by Congress." The legislative history of both Acts, discussed *supra*, pp. 59–83, demonstrates conclusively, we believe, that Congress understood that neither the Administrative Procedure Act, nor the Labor Management Relations Act, would transfer from the Board to the courts ultimate power to make findings of fact and draw reasonable inferences therefrom. As the Report of the House Conference Committee on the Labor Management Relations Act put it: "This is not to say that the courts will be required to decide any case *de novo* themselves weighing the evidence, but they will be under a duty to see that

the Board * * * does not infer facts that are not supported by evidence or are not consistent with evidence in the record, and that it does not concentrate on one element of proof to the exclusion of others without adequate explanation of its reasons for disregarding or discrediting the evidence that is in conflict with its findings."[65] Indeed, the legislative history shows that the amendments to Sections 10 (b) and (c) of the Act were designed to strengthen the Board's decisional process, and that the House Conference Committee expected that from these provisions "Immeasurably increased respect for decisions of the Board should result * * *."[66]

It remains true therefore under the amended Act, as under the original Act, that, as this Court stated in the *Waterman Steamship* case, 309 U. S. 206, 208–209:

> It is of paramount importance that courts not encroach upon this exclusive power of the Board [to make findings of fact and draw reasonable inferences therefrom] if effect is to be given the intention of Congress to apply an orderly, informed and specialized procedure to the complex administrative problems arising in the solution of industrial disputes. As it did in setting up other administrative bodies, Congress has left questions of law which arise before the Board—but not more—ul-

[65] Legislative History, *op. cit.*, *supra*, note 9, p. 42, p. 560.
[66] *Ibid.*, p. 558.

> timately to the traditional review of the judiciary. Not by accident, but in line with a general policy, Congress has deemed it wise to entrust the finding of facts to these specialized agencies. It is essential that courts regard this division of responsibility which Congress as a matter of policy has embodied in the very statute from which the Court of Appeals derived its jurisdiction to act.

We shall now demonstrate that the court below substituted for the Board's findings of fact findings of its own, and that it drew from the evidence inferences contrary to those drawn by the Board. This discussion will also demonstrate that in every such instance the Board's findings and inferences were the more reasonable, and that, therefore, on any standard of review, the Board's findings should have been sustained.

C. THE COURT BELOW IMPROPERLY REJECTED THE BOARD'S FINDINGS CONCERNING THE CREDIBILITY OF VARIOUS WITNESSES

It is clear from its opinion (R. 881–884) that the court below did not accept the Board's conclusions as to the credibility of witnesses, and that it chose to believe the Company's witnesses rather than the Board's whenever there was a conflict of consequence. And the Company has continued to argue that the court should accept the testimony of its witnesses as against testimony found by the Board to be more credible—in part

for the same reasons repudiated by this Court in 1949.

Under no standard of appellate review with which we are familiar does the reviewing court substitute its judgment for that of the original fact finder with respect to the credibility of witnesses. Appellate courts have recognized that it is often difficult to tell from the bare printed record which witnesses are telling the truth when testimony is in conflict, and that in determining questions of credibility the person who sees and hears the witness has a substantial advantage. For that reason, among others, appellate courts generally do not reverse lower tribunals on issues of this sort except when it is clear from the printed record that the witnesses on one side are not truthful.

In its 1949 opinion in this case, this Court stated in its discussion of the examiner's findings as to credibility, which the Board ordered adopted, that "the printed transcript suggests thoughtful and discriminating evaluation of the facts" (337 U. S., at 660). This language in itself suggests that the weighing of the evidence by the Board here cannot be regarded as arbitrary or unreasonable, on the basis of the record as a whole. The Court also noted that "The ordinary lawsuit, civil or criminal, normally depends for its resolution on which version of the facts in dispute is accepted by the trier of fact" (337 U. S. at 659).

In the present case, as would be expected, it is sometimes difficult to tell from the printed record

which of two conflicting stories is the true one. But, we submit, for a surprisingly large proportion of the principal Company witnesses, an examination of their printed testimony discloses that they were evasive and untruthful. On two of the seven ships covered by the Board's findings—the *Johnson* and the *McGonagle*—the testimony relied upon by the Board was uncontradicted. On each of the other five ships the record clearly discloses, in our opinion, that one or more of the chief officers was not testifying honestly and candidly. We think it would be difficult to find a case in which analysis of the printed record more fully substantiates the hearing officer's findings as to credibility.

The following examples show why we believe that the trial examiner, who had the advantage of seeing and hearing the witnesses, properly assessed their credibility.

1. THE *OLDS*, VOGEL, AND THE DISCHARGE OF SHARTLE

The Board, in finding the discharge of Shartle discriminatory, credited the bulk of Shartle's testimony, while refusing to credit his denial of the winch incident (R. 836, n. 43; see p. 17, *supra*). This Court did not regard Shartle's denial of the winch incident as inflicting a "death wound" upon other portions of his testimony, which the Board had found credible. Nevertheless, the court below rejected all of Shartle's testimony, on the ground that his denial of the winch incident made it

"difficult to understand how Shartle's other testimony could be considered entirely credible" (R. 882). This holding is not only inconsistent with this Court's conclusion, but conflicts with the well-established principle that a trier of fact need not accept all of the testimony offered by a witness in order to sustain a finding based largely upon evidence adduced by that witness.[67]

Moreover, although the Board had in the main rejected the testimony of Dobson, Hewer, Chrobak and Captain Murray, insofar as it conflicted with other credited testimony relating to the Shartle discharge, and this Court had approved the rejection on the ground that their testimony did not carry "irrefutable truth," the court below credited their testimony entirely. An analysis of some of the testimony of these officers will show that the Board's refusal to lend credence to their statements was entirely justified.

(a) *First Mate Dobson.*—First Mate Dobson of the *Olds* is the officer who discharged Shartle, and subsequently attempted to mete out the same treatment to Vogel when he discovered that the latter had succeeded Shartle as Union organizer (*supra*, pp. 11–12, 21). An analysis of Dobson's testimony regarding the Vogel incident clearly shows that the Board's doubts as to Dobson's veracity were well founded. Thus on direct examina-

[67] *Lavender* v. *Kurn*, 327 U. S. 645, 653; *Tucker* v. *Loew's Theatre Corp.*, 149 F. 2d 677, 679 (C. A. 2).

tion Dobson denied that he ordered Vogel to leave the ship (R. 823; 504). However, on cross-examination Dobson admitted that he had discovered on the day Vogel was ordered to leave that Vogel was the union organizer (R. 508) and that, "I was awfully surprised to find out that Vogel was the person who was causing so much trouble" (R. 509). In the next breath, however, he denied that there had been any trouble on the ship during the organizing campaign (*ibid.*). Dobson also admitted that Vogel said that he would not have enough time to pack his clothes before the ship sailed, and that "I may have told him not to get off that trip" (R. 518–519). Obviously, in the light of the admitted conversation, someone must have ordered Vogel to leave the ship immediately, and the only other person present at the time was Dobson. The first mate also testified that there was a shortage of seamen during the war and that he usually inquired why a man wanted to leave the ship particularly when the ship was short-handed, as it then was (R. 519–520). However, although he knew that Vogel would leave at the end of the trip, he made no inquiry as to the reason and said he didn't know why (*ibid.*).[68]

[68] Note Dobson's statement that "We are supposed to ask *each and every member* when he quits why he is leaving" (R. 519, emphasis supplied). Only the fact that the first mate knew that Vogel was leaving because he had ordered him to do so would explain his failure to ask the usual and required

First Mate Dobson also stated that one of the reasons for the discharge of Shartle was his failure to perform his share of the painting during the fit-out (R. 499). Dobson testified that he himself observed the men painting the side of the ship and saw Shartle was shirking on the job (R. 513–514). He had also had a complaint to the same effect from the second mate (R. 499). Nevertheless Dobson testified that he did not say anything to Shartle at the time and did not reprimand him in any way (R. 514). Dobson's story that he saw a seaman loafing on the job and did not criticize him for it, or urge him to get to work, taxes credulity. Either Dobson was admittedly derelict in his own duty, or as is more likely, he had no reason to take disciplinary action because Shartle was performing his work adequately. And the latter reason, which the Board found to be the true one (R. 834), is supported by the testimony of Vogel, who was Shartle's partner during the painting season (R. 216, 220–221). Furthermore, the urgency with which Dobson interrupted the eringle splicing work when he saw Vogel helping Shartle, and his alleged decision immediately to discharge him for that reason (R. 216, 506), creates a valid doubt that, had the painting incident occurred as he

questions. It is also noteworthy that Dobson first denied having any knowledge as to Vogel's prior testimony, and then later admitted that Company counsel had discussed it with him (R. 518).

testified, he would have let it pass unnoticed for four weeks. The first mate testified that painting is a part of an A. B.'s job not only during fit-out but throughout the sailing season (R. 520–521). On the other hand a splicing job may occur about once every six months (R. 200). It would therefore not have been surprising to Dobson that Shartle, a young man less than two years at sea, did not have any real prior experience at splicing cringles. Nevertheless, Dobson, who presumably overlooked the alleged dereliction in painting for more than four weeks, seized immediately upon the splicing incident, when he saw Shartle being assisted by Vogel, to terminate Shartle's employment (R. 216, 506). His testimony therefore is internally inconsistent and improbable, as well as in conflict with that of Vogel as well as Shartle. And he was the most important of the company witnesses with respect to the dismissal of Shartle, since he was the officer entirely responsible for the discharge.

(b) *Captain Murray.*—The defects in Captain Murray's testimony are equally apparent (R. 822, 834, n. 39; 673–695). Thus, the captain testified that he had once called upon Shartle to take the wheel and found him to be incompetent (R. 674–675). However, Third Mate Hewer, a Company witness, who was present at the time, testified that Shartle had handled the wheel properly, although steering the ship was not a part of

Shartle's regular duties (R. 540). Similarly, the captain stated that Shartle was not permitted to handle the winch controls after the incident wherein he permitted the cable to become too taut (R. 685–686); but Second Mate Chrobak, appearing as a Company witness, testified that Shartle did operate the winches after that date (R. 350). Captain Murray also stated that there was no shortage of A. B.'s and that he could obtain as many as he needed (R. 684), a statement that was contradicted by the Company's industrial relations manager (R. 671–672), and by his own mates (R. 338–339, 507, 508, 519–520). Captain Murray, who had been on the lakes for 45 years (R. 673), also testified that he didn't know anything about the Union or even that there was an organizing campaign on his ship, and that he didn't remember what he had testified about before the War Labor Board two years before, why he was there or who called him, when the cross-examination indicated that this might be pertinent to the present case (R. 691–692).

(c) *Hewer.*—Third Mate Hewer testified at one point that he could not recall definitely that he had ever discussed Shartle's competency with the first mate (R. 525, 527–528), and later vaguely remembered that Dobson had questioned him concerning Shartle and that he had told him that "there was a number of things that he was doing that weren't up to par, could be much better"

(R. 528). Because of the indefinite nature of Hewer's testimony the Board did not accept it (R. 833, n. 37), but the court below found that "it is undisputed that Dobson" did discuss Shartle's work with Hewer (R. 882). Hewer also testified that he did not know that Shartle was a union organizer until the day of the discharge, when he ascertained that fact from one of the other seamen (R. 530–533). He admitted, however, that the men continually spoke about matters that interested them; that such discussions were carried on during mealtimes; that many of the seamen ate at the same table with the officers; and that it did not take very long for the officers to learn what the men were talking about (R. 532). Since there can be no question but that the Union's organizational drive, and its principal proponents, were probably among the chief topics of conversation at that time, the Board, for that reason as well as the others stated in its opinion, found Hewer's testimony on this point unacceptable (R. 831).

(d) *Chrobak.*—Second Mate Chrobak also attempted to explain away his denial of knowledge of Shartle's organizational activities by alleging that he, as well as the other officers, first discovered Shartle's status about three days after the discharge, by reading in a Cleveland newspaper that charges had been filed with the Board (R. 340–341). However, as the Board pointed out (R. 831, n.

35), no charges were filed in reference to Shartle until many months after the discharge (R. 668). Chrobak's testimony on this point, therefore, could not have been credited. Nevertheless, the Board did not consider that this statement was sufficient to warrant discrediting all of Chrobak's utterances, and did accept his version of the winch incident (*supra,* p. 17). Had the court below applied to Chrobak the test it invoked with respect to Shartle, it would have rejected the very testimony as to the winch incident which the Board credited in preference to Shartle's.

2. *The Morse—Captain Gerlach.*—Captain Gerlach of the *Morse* was perhaps the most evasive witness the Company produced. The captain testified that he knew nothing about the Union or its program (R. 307–308, 326). But he admitted he was able to advise seaman Zmrazek that unions were not being properly led, and that the rotary hiring system, which was a major point in the Union's program, would be disadvantageous to him (R. 307, 313). The captain also stated that he had never seen or read the "Ferbert letters" (R. 57, 743–746) or received any information or instructions from the Company concerning the election (R. 327–328), and that he learned that an election would be held on his ship only by hearing other people talk about it (R. 327–328). This testimony may be compared with that of the Company's chief mail clerk (R. 656)

that the letters were sent to all ships' masters for distribution to the crew (R. 657, 661, 793, 797), and that of the Company's Manager of Industrial Relations (R. 664) that at the annual spring meeting of the captains and chief engineers they were advised by the President of the Company as to its policy concerning the Union and the coming election (R. 667–669). Again, Captain Gerlach, in testifying about the occasion when he had ejected Weissflog from the messroom for attempting to organize the employees, first said, on cross-examination, that the waitress who complained to him had not said that Weissflog was talking about the Union (310, 322–323); but on further examination by the trial examiner he finally reluctantly admitted that the girl had told him Weissflog was soliciting membership for the Union (R. 325). The captain's attempts to evade answering the questions asked by Board counsel and the trial examiner until Company counsel advised him to do so are particularly evident on this point (R. 324–325). Captain Gerlach also said at one time, in justification of his stopping Weissflog from talking in the messroom, that there was a rule against "talking around at meal time in the messroom or dining room" (R. 323). Since this was obviously ridiculous, Gerlach was compelled to retract his statement (*ibid.*). He admitted that he had never reprimanded anyone other than Weissflog for talking in the messroom (R. 324).

3. *The Widener—Chief Hunger.*—Chief Engineer Hunger of the *Widener* is another Company witness whose testimony in many respects was vague and self-contradictory (R. 817–818; 628–648). Thus, Chief Engineer Hunger testified that he didn't know there would be an election until "almost election time" (R. 644), although he was present during the meeting held by the Company for captains and chief engineers in March 1944 at which the matter was discussed (R. 631–632, 646, 549, 665–666). The chief engineer also testified that when he ordered seaman Babin out of the engine room he also warned him not to bother the men in their rooms because it was interfering with their sleep (R. 629–630). However, on cross-examination he admitted that he did not know Babin was talking to the men in their rooms until a week later, when one of the engine crew complained about it (R. 638–640), and he was therefore unable to explain why he had warned Babin against the practice before he himself knew about it (R. 639–640). Chief Engineer Hunger also insisted he did not know Babin was a union organizer when he ordered him out of the engine room (R. 638), but that statement is hardly consistent with his fear that Babin was "trying to talk [one of the engine crew] into something" (obviously membership in the Union), and his testimony that he saw literature in Babin's pocket and "thought it was something pertaining to the——" (R. 637–638).

The Board, crediting the testimony of Babin, and discrediting the conflicting testimony of Captain Lehne and Chief Engineer Hunger, found that Lehne and Hunger unreasonably restricted Babin's efforts to solicit union membership among the crew of the steamer *Widener, inter alia,* by prohibiting him from talking about the Union to the men in the engine room. Babin had testified that it was his duty as a deck hand to mark the soundings on the board used for the guidance of the engineers; that this board was kept on the inside of the door of the engine room leading to the fantail (R. 32–33); that, although he did discuss union matters with the men while taking soundings, the Company had no rule prohibiting the men from talking while on watch (R. 17–18, 403); and that he had not bothered or annoyed the engine crew while either he or they were working (R. 14, 39). Captain Lehne and Chief Engineer Hunger testified, on the contrary, that they had barred Babin from the engine room because he had no legitimate business there and had bothered the men while they were working. To support the assertion that Babin had no business in the engine room, both Captain Lehne and Chief Engineer Hunger testified that the sounding board was not inside the engine room but in the fantail, "the room where the steering gear is located" R. 412), situated approximately fifteen feet *above* and to the rear of the engine room (R. 397, 630). Soundings are admittedly posted

for the use of the engineers who must be able clearly to see the markings from their posts in the engine room (R. 397).

Particularly in the absence of any explanation as to why the sounding board could not have been located in the engine room, the Board found it incredible that the sounding board would be placed in such a position as to require the engineers to look up, approximately nine feet, through a doorway, to read the markings, as the Captain testified they were required to do (R. 411–412). Nevertheless, despite the Board's resolution, the court below found as follows (R. 883–884):

> Babin said that he was censured for bothering the men when working, and was ordered by the chief engineer to stay out of the engine room and foremen's quarters. He said that he went into the engine room because it was his duty to make the soundings and to tell the engineers when to pump. Both the chief engineer [Hunger] and the Captain [Lehne] said that the sounding board is not in the engine room, but in the fantail. Orders as to pumping were given by the master or made by telephone. On the whole record it is incredible that this was not the case on a modern ship.

In view of the fact that the *Peter A. B. Widener,* the ship in question, was built in 1906,[69] and

[69] United States Treasury Department, *Merchant Vessels of the United States*, 1943 (Gov't. Print. Office), p. 51.

therefore cannot properly be called a "modern ship," and that Babin's version of the location of the sounding board was more reasonable than the version given by Hunger and Lehne to justify their ejection of Babin from the engine room, we submit that the Board's resolution of the conflict was the correct one.

The record does not support the implication contained in the first sentence of the quotation from the court's opinion that Babin conceded that he was properly censured. Babin testified that he had not bothered the men while either he or they were working. It follows that, according to Babin's testimony, the Chief Engineer's order that he keep out of the engine room was designed to interfere with his legitimate organizing activity, and that the allegation that he was bothering the men was a pretext devised to disguise the improper character of the order. The same comments are applicable to the court's statement that each of the three organizers, Lee, Babin and Weissflog "admits being reprimanded on the ground that he carried his organization into a forbidden part of the ship or to excessive limits" (R. 883). None of the organizers admitted that they had in fact carried their organizing to excessive limits (R. 14–15, 39–40, 129, 146–147, 702–703; 418). The record, thus, affords no support for the court's conclusion that the organizers admitted that the officers' interference with

their organizational activities was provoked by any organizational excesses. The record likewise discloses no support for the court's finding that "not one of the three principal organizers, Lee, Babin and Weissflog, claims to have been prevented from engaging in union activities." Precisely the contrary is true (R. 14–15, 17–18, 58, 60–61, 62, 128–129, 135–136, 146–147).

A similar error underlies the court's statement that "Shartle * * * does not claim he was in any way hindered in his organizing" (R. 882). Shartle testified that he was warned by the engineers, and by the second and third mates that "I better watch my step or else I wouldn't be on the *Olds* any longer" (R. 196–197). "The advice of these men was not lightly to be disregarded by employees under their supervision." *National Labor Relations Board* v. *Quality Art Novelty Co.*, 127 F. 2d 903, 905 (C. A. 2).

4. *The Filbert — Captain Brinker.*—Captain Brinker of the *Filbert* was another Company witness whose testimony contains many contradictions (R. 807–811; 416–436). For example, compare his anger at seaman Lee for allegedly driving two firemen off the ship when "it was very difficult to obtain men in 1944" (R. 417–418), with his indifference at the quitting of seaman Conn since "I didn't go short [of men] so very much last year" (R. 432). Captain Brinker also insisted that his conversations with

Lee were always held in private (R. 422) and that the crew did not know what they were talking about (R. 430–431), statements that were contradicted by the testimony of Third Mate King, who appeared as a Company witness (R. 437–438), that the crew knew and discussed the fact that Lee and the captain spoke about the Union (R. 444–446).

5. *The Bunson—Captain Lawless.*—The failure of Captain Lawless of the *Bunson* to remember his own prior discussions also justified the trial examiner's refusal to credit his testimony (R. 814–815; 465–498). Thus, the captain denied that he had ever discussed "rotary shipping" or other points of the Union's program in a meeting he had held with the mates shortly before the election (R. 485–486), although Third Mate Carr, a Company witness (R. 356), who was admittedly present at the meeting, testified that the captain did discuss the Union's program including "rotary shipping" (R. 375–376, 485). Similarly, the captain denied that he had even heard any gossip about conversations relating to the Union carried on between Third Mate Carr and Third Assistant Engineer Scharmin (R. 356), in the presence of the crew (R. 472–473, 491), whereas the third mate appearing as a Company witness testified that the discussions had been openly held and "Everybody in the boat knew it" (R. 363).

As has already been stated, whatever questions may still be open as to the scope of judicial review under the Administrative Procedure Act and the Labor-Management Relations Act, it has been uniformly recognized that those acts do not empower the reviewing courts to review the record *de novo* and make their own findings as to credibility. Pp. 93, 98, *supra*. Even under the "clearly erroneous" test governing review of lower court decisions, Rule 52 (a) of the Rules of Civil Procedure provides that "due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

Since there was no basis for overturning the Board's rulings on credibility, the court below clearly erred in refusing to hold that the acts found by the Board to be unfair labor practices actually occurred.

D. THE BOARD'S FINDING DOES NOT REST ON INCOMPETENT OR HEARSAY EVIDENCE

The court below found that the Board relied upon hearsay and incompetent evidence. An examination of the record will show that although hearsay was admitted in evidence, in most instances the Board did not rely on it, and indeed, sometimes specifically disclaimed any such reliance (*e. g.*, R. 814, n. 12). Of the three items referred to by the court (R. 882), the Board did not rely on the first, and the others were admissible under ordinary principles of evidence.

Before discussing these three items, we wish to point out that at the time the hearing was held and the case decided by the Board, prior to the enactment of the 1947 Act, the Board was not bound by the rules of evidence applicable to courts as long as its findings are "supported by the kind of evidence on which responsible persons are accustomed to rely in serious affairs." *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. 2d 862, 873 (C. A. 2), certiorari denied, 304 U. S. 576; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 229–230. Accordingly, the Board's decision is not subject to reversal for failure to observe a provision of the statute which was not in effect at the time the Board acted. (See pp. 40–42, 80, n. 57, *supra.*)

1. The court below stated that "certain wholly incompetent testimony was admitted to the effect that Shartle was discharged because of union activity" (R. 882). The testimony referred to is that of Shartle who stated that following his discharge he discussed the matter with numerous persons on the ship and they all assured him that he was not incompetent and that he was dismissed because of his union activity (R. 173–174). No objection was raised to the introduction of this evidence, and no motion to strike it was made. Nevertheless, neither the trial examiner nor the Board based the finding that Shartle had been discriminatorily discharged in

any part upon this testimony (See 337 U. S. 660, n. 3). Even if the admission of the testimony under these circumstances constituted error, which we deny, the error could not possibly have been prejudicial, nor could it militate against the propriety of the Board's finding in Shartle's case. Cf. *Berkshire Knitting Mills* v. *National Labor Relations Board,* 139 F. 2d 134, 137 (C. A. 3). Even if the new statutes are applicable, they provide only that the Board's decisions must be based upon probative evidence,[70] not that the Board's findings must be set aside if other evidence not relied on is included in the record. *Sisto* v. *Civil Aeronautics Board,* 179 F. 2d 47, 51 (C. A. D. C.).[71]

2. The court below also held that the Board had improperly relied upon certain testimony which the court found inadmissible under the hearsay rule (R. 882, n. 5). The testimony thus

[70] Administrative Procedure Act, Sections 7 (c), and 10 (e).

[71] "* * * Therefore, the requirement that 'no order shall issue except upon the consideration of the whole record * * * and as supported by and in accordance with reliable, probative and substantial evidence,' must mean that where there is reliable, probative and substantial evidence, any findings, conclusions, and orders based thereon will be sustained even though unreliable, non-probative and unsubstantial evidence was allowed in by the examiner. The admission of irrelevant or incompetent matter before an administrative agency does not constitute reversible error, if there is substantial evidence in the record to sustain the agency's determination. This being the case prejudice cannot be alleged to the admission of improper evidence unless it be shown that the Board relied on it" (179 F. 2d at 51).

referred to relates to the Board's findings that Captain Wallace indicated to seaman Sims that it was his intention to discharge Anderson for union activity and thereby, impliedly, also threatened Sims with discharge unless Sims refrained from further union activity (R. 811–812; 280). This finding is supported by the uncontradicted testimony of Sims himself, which was credited by the Board, that Captain Wallace stated to him that he intended to seize any opportunity that offered itself to discharge Anderson because "he is a great union man." We submit that Sims' testimony was not hearsay. The making of the statement itself constituted an unfair labor practice, since the necessary effect of making it was to inhibit at least Sims' union activity. That under these circumstances Sims' testimony as to the making of the statement is admissible and probative is apparent.

3. The court below further held that testimony relied upon by the Board to support its finding that the Company "attempted to have Lee discharged because of his union activity" (R. 811), was also inadmissible as hearsay (R. 882, n. 5). The testimony referred to relates to the Board's finding that Chief Engineer Curry, Lee's supervisor, had advised Lee that his discharge had been urged upon Captain Brinker by John Zyp, of the Company's personnel staff (R. 810–811; 134–135). The Board's finding as to what Curry said is supported by the uncontradicted and credited testi-

mony of Lee, to whom the chief engineer repeated the threat of discharge. Since Curry was one of the top ranking officers on the ship, with authority to hire and fire (R. 670–671), he was in a position effectively to warn Lee that his job was at stake because of Lee's union activities. The statement of Curry, an agent of the Company (cf. *International Ass'n of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 80; *Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 521), to Lee, was properly admitted under the exception to the hearsay rule, which provides that declarations of an agent are admissible as original evidence against the principal (*Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229, 250), particularly since in the instant case no objection was raised when Lee testified. The Board therefore properly found the Company responsible for the unfair labor practice resulting from Curry's statement to Lee, since the statement would normally be expected to have the effect of curtailing Lee's organizational activities. In that respect Lee's testimony was admissible and could be made the basis for an appropriate finding.

In contrast, although hearsay testimony does appear elsewhere in the record the Board carefully—and sometimes expressly—abstained from making any findings based upon this testimony even though such evidence was admissible under the Wagner Act, and could be made the basis of findings in connection with other related

evidence.[72] See for example the Board's refusal to base findings upon the testimony of seaman Herrick concerning coercive statements made by Captain Penzenhagen of the *McGonagle* (R. 814, n. 12; 233–244).

We submit that even if the provision in the 1947 Act making the rules of evidence controlling were applicable, the Board's findings do not rest on improperly admitted testimony. In addition, it is clear that apart from the items in question the findings are supported by ample evidence unquestionably admissible and probative.

E. THE COMPANY IS RESPONSIBLE FOR THE UNFAIR LABOR PRACTICES COMMITTED

The court below held and respondent contends that responsibility for the action of the ship officers cannot be traced to the central management of the Company, that the Ferbert letters (found by the Board to be a part of the pattern of unlawful conduct) immunized the Company from responsibility and that the fact that unfair practices were proved on only seven ships estab-

[72] Cf. *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 229–230; *National Labor Relations Board* v. *Service Wood Heel Co.*, 124 F. 2d 470, 472–474 (C. A. 1); *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. 2d 862, 873 (C. A. 2), certiorari denied, 304 U. S. 576; *Union Drawn Steel Co.* v. *National Labor Relations Board*, 109 F. 2d 587, 592 (C. A. 3); *Martel Mills Corp.* v. *National Labor Relations Board*, 114 F. 2d 624, 629 (C. A. 4); *National Labor Relations Board* v. *American Pot. & Chem. Corp.*, 98 F. 2d 488, 493–494 (C. A. 9), certiorari denied, 306 U. S. 643.

lishes that the improper acts were sporadic and were not part of a general policy.

The short answer to this contention is that it is foreclosed by the decision of this Court. The same argument was made by the Company at the first argument here. The Court decided that the evidence in this case was "substantial enough under the Wagner Act" to justify the Board's order. But the amendments to that Act in no way changed the applicable law as to the extent of an employer's liability for the anti-union acts of his supervisory employees or as to the number or extent of violations necessary to establish an employer's culpability. Accordingly, the Company cannot be heard to contend that it is not responsible for these violations; its responsibility is unchanged from what it was under the earlier Act, and this Court has expressly approved the Board's findings under that Act.

1. The Company Is Liable for the Illegal Conduct of Its Ship Officers Even Though It Was Unaware of and Might Have Disapproved Such Conduct

Quite apart from the prior decision of this Court, however, controlling precedents establish the Company's responsibility for the acts of its officers, whether or not they were anticipated by the Company's higher officers. A similar contention was squarely rejected in *Heinz Co.* v. *National Labor Relations Board,* 311 U. S. 514, 519, where the employer was held responsible although it was unaware of the antiunion con-

duct of its supervisors when it occurred, and issued instructions to them to be neutral as soon as it learned of their activities. The Court there stated (at p. 521):

> The question is not one of legal liability of the employer in damages or for penalties on principles of agency or *respondeat superior,* but only whether the Act condemns such activities as unfair labor practices so far as the employer may gain from them any advantage in the bargaining process of a kind which the Act proscribes. To that extent we hold that the employer is within the reach of the Board's order to prevent any repetition of such activities and to remove the consequences of them upon the employees' right of self-organization, quite as much as if he had directed them.

That such a rule should be particularly applicable to cases involving seamen is self-evident. The authority of ships' officers is not limited solely by the authorization granted them by the Company, but is based as well upon maritime law and custom. It is far greater than that of supervisors in industrial plants. This Court said in *Southern S. S. Co.* v. *National Labor Relations Board,* 316 U. S. 31, 38, "Ever since men have gone to sea, the relationship of master to seaman has been entirely different from that of employer to employee on land." Obviously therefore, the effect

upon employees of the statements and acts of the captains and officers of the seven vessels cannot be underestimated by a comparison with similar situations on shore. To the seamen the officers are the Company. And since the Company has placed this power in the hands of its officers, it must assume the responsibility for their actions, and cannot hide behind an alleged statement of neutrality.

That the Company did obtain benefit "of a kind which the Act proscribes" from the intimidatory conduct of the captains, mates and engineers is manifest. Beyond doubt the effect of the threats which were directed at the organizers and of the unduly restrictive rules concerning solicitation was to hamper efforts at unionization aboard the ships. The Company was therefore "within the reach of the Board's order to prevent any repetition of such activities and to remove the consequences of them upon the employees' right of self-organization."

The Company contends, however, that its instructions to the officers were issued prior to their commission of any of the unfair labor practices and that therefore the *Heinz* case is not applicable (Brief, p. 36). We submit that the doctrine enunciated in the *Heinz* case is equally applicable in such a situation, particularly where, as here, the Company did not clearly and definitely advise its employees concerning the

alleged orders of neutrality[73] (R. 830; 667–668). Courts of Appeals have applied the principle of the *Heinz* case and held employers liable for the conduct of their supervisors in similar cases. Thus in *National Labor Relations Board* v. *Bird Machine Co.*, 161 F. 2d 589, a case in many respects similar to the instant case, the Court of Appeals for the First Circuit said (at p. 591):

> Where, however, as here, disparaging remarks by supervisory employees are joined with threats of economic reprisal and loss of privileges, they may be used to indicate a course of conduct coercive in nature. See *N. L. R. B.* v. *American Laundry Machinery Co.*, 2 Cir., 1945, 152 F. 2d 400. Certainly the foremen's threats concerning loss of privileges, including rest periods, vacations and bonuses are a violation of Section 8 (1) of the Act. See *H. J. Heinz Co.* v. *N. L. R. B.*, 1941, 311

[73] The Company contends that the "Fulbert" letters evidence such notice to the seamen (brief, p. 36). However, the Board found these letters themselves to "constitute an integral and inseparable part of the respondent's otherwise illegal course of conduct" (R. 855). Obviously, therefore, they cannot be considered as true statements of neutrality. In any event the letters do not specifically advise the employees that the Company had given strict orders to its supervisors to abstain from engaging in antiunion activity. The general statements of neutrality in the letters (R. 744–746) are obviously insufficient to counteract the misconduct of the ships' officers. Compare *Boeing Airplane Co.* v. *N. L. R. B.*, 140 F. 2d 423, 425–428 (C. A. 10), where the employer publicized to its employees its repeated instructions to its supervisors concerning their neutrality.

> U. S. 514, 61 S. Ct. 320, 85 L. Ed. 309. But the respondent contends that it is not chargeable with responsibility for these foremen activities since respondent's president at the commencement of the Union campaign had called a meeting of supervisory personnel and explicitly instructed them not to interfere with the union activity of the employees. The purport of these instructions was not conveyed generally to the employees although there was testimony that some few knew of the position that the president had taken. But the *Heinz* case has held that where the employer may gain advantage from such unauthorized foremen anti-union activities it is within the Board's province to prevent repetition thereof by its order.

See also, *North Carolina Finishing Co.* v. *National Labor Relations Board,* 133 F. 2d 714, 716–717 (C. A. 4), certiorari denied, 320 U. S. 738; *National Labor Relations Board* v. *Chicago Apparatus Co.,* 116 F. 2d 753, 757–758 (C. A. 7); *National Labor Relations Board* v. *Aintree Corp.,* 132 F. 2d 469, 471–472 (C. A. 7), certiorari denied, 318 U. S. 774; *National Labor Relations Board* v. *Schaefer-Hitchcock Co.,* 131 F. 2d 1004, 1007 (C. A. 9).[74]

The Company's mere lack of knowledge of the unlawful conduct of its licensed personnel does

[74] See to the same effect the opinion of the court below in *National Labor Relations Board* v. *Mylan-Sparta Co.,* 166 F. 2d 485, 490.

not, as the court below apparently believed, relieve it of responsibility. For the Company's responsibility under the *Heinz* case does not turn on whether it approved of or ratified the illegal conduct of its supervisors, but upon whether the action of the supervisors resulted in restraints upon employee freedom which the Act forbids. At no time, as the Company's industrial relations manager testified, did the Company advise the employees, or the Union, that it had instructed its supervisors not to interfere with the employees' organization efforts (R. 664, 667–668). Under these circumstances the Company is in no position to claim advantage from the fact that conduct of its licensed officers, allegedly in violation of its orders, was not brought to its attention. Cf. *Boeing Airplane Co.* v. *National Labor Relations Board,* 140 F. 2d 423, 425–428 (C. A. 10). The unfair labor practices of the supervisory officers cannot therefore lightly be brushed aside, or held to be unrelated to their position as Company representatives. The Board properly attributed such practices to the Company and required the Company to remedy them.

2. The Board's Conclusion That the Activities of the Officers Were Part of a Single Pattern of Conduct Tied in With the Policy of the Company Is Amply Supported by the Record

Not only is the Company responsible as a matter of law for the unfair labor practices committed by the ship's officers, but the record supports the Board's findings that the activities

of these officers were in fact an integral part of a broad Company pattern of illegal interference with the rights of the employees. The Company attempts to refute this finding by pointing to the instructions it gave to its supervisory personnel. But as has been seen these instructions were concededly never communicated to the employees who were, however, made acutely aware of the Company's real attitude through the conduct of the Company's representatives.

The Company's antiunion campaign reached its peak in the period immediately preceding the company-wide election. And the conduct of the Company's leading representatives on each of the ships as to which evidence was introduced was so strikingly similar as to warrant the Board's inference that it passed beyond the realm of coincidence.[75] Thus, Captain Gerlach of the *Morse* resorted to physical force to interfere with the organization activities of Weissflog, while on the *Filbert* the organizer was threatened with discharge, a fate which actually overtook the organizer on the *Olds,* and which threatened his successor. Meanwhile on the *Johnson,* Captain Wallace intimidated the organizer by threatening to fire a known union supporter, while on the *Widener* the organizer was subjected to repeated abuse at the hands of the officers, who attempted to limit his legitimate organizing activities, treat-

[75] The facts summarized below have been stated more fully with appropriate record references at pp. 7–21, *supra.*

ment similar to that accorded the organizers on the *Morse* and *Johnson*. On the *McGonagle*, *Bunson*, and *Morse*, the captains engaged in direct interrogation of their men as to their union membership, while Captain Wallace of the *Johnson* did not stop with interrogation but broadly hinted that the Company kept the union hall under surveillance.

The similarity of antiunion tactics may perhaps be explained as the typical manner in which recalcitrant employers, acting individually and not as part of an organization, have sought to interfere with, restrain, and coerce their employees in violation of the law. But direct evidence that the several captains were not merely individually inventing ways to interfere with their employees is to be found in the campaign of vilification and abuse heaped upon the union supporters and in the common use of racial prejudices to disrupt the attempt at organization. The similarily of the expressions used by the officers on each of the ships here involved strongly supports the Board's finding that they came from an underlying Company-wide pattern.[76] Their repetition

[76] See for instance the testimony concerning (1) Captain Brinker of the *Filbert* (R. 127–133, 136–138); (2) Captain Wallace of the *Johnson* (R. 250–251, 280); (3) Captain Penzenhagen of the *McGonagle* (R. 225, 235, 238); (4) Captain Lawless of the *Bunson* (R. 85); (5) Captain Gerlach of the *Morse* (R. 42–43); and Captain Murray of the *Olds* (R. 171, 215). See also the testimony concerning the other officers at pp. 58, 64, 86, 214, 226–227, 262, 281–282, of the record.

on each ship, at about the same time, lends strong support for the Board's finding that these supervisors were acting in accordance with a "pattern and a design" (R. 827). When considered in that light there can be no question but that they were a part and parcel of the coercive conduct which the Company adopted to discourage union membership among its employees."

The Ferbert letters.—While this course of conduct continued the Company addressed to the employees the "Ferbert letters" (R. 743–746) which, viewed as a whole, were designed unmistakably to convey to them the Company's opposi-

[11] In support of its conclusion that the coercive antiunion conduct of the licensed personnel did not reflect the policy of the Company, the court stated that "permission was given for the presence of a union organizer on each of the 73 ships" (R. 880, see also 883). But there is not a scintilla of evidence in the record that the Union placed organizers on the ship with the knowledge and permission of the Company or that the Company authorized organizers openly to engage in union solicitation. Cf. *National Labor Relations Board* v. *Cities Service Oil Co.*, 122 F. 2d 149 (C. A. 2). The men involved were employees of the Company, some of whom volunteered to become organizers long after they had originally joined the Company's fleet. Others were seamen who were hired by the Company not because they were organizers but because of its need for men during the war. As to these it nowhere appears that this Company even knew they were organizers. Cf. *National Labor Relations Board* v. *Cities Service Oil Co.*, 129 F. 2d 933 (C. A. 2). Indeed, the statements and conduct of the ship's officers when they ascertained the identity of the organizers by itself refutes the hypothesis that the Union was freely permitted by the Company to place organizers on each of the ships.

tion to the Union. Interspersed in the letters, however, appeared the following statements: "The Company recognizes the right of each employe to join any Union he may select and such membership will not affect his position with the Company." * * * "No one must threaten you in this election. It is your privilege to make up your own mind as to how you should vote."

With respect to these letters, the Board concluded that (R. 829):

> The restraining character and effect of * * * the [Company's] conduct as a whole, were not nullified by the statements in the letters that the employees had the right to join a labor organization. The letters were received in an atmosphere already charged with the supervisors' attitude of hostility and opposition to the Union. And even if these statements were intended as an assurance that employees would not be discriminated against because of their union activities, the assurance was rendered meaningless and suspect in the eyes of the employees by the [Company's] entire course of coercive, intimidatory, and discriminatory conduct, both before and after the receipt of these letters.

The court below found, on the other hand, that the statements in the Ferbert letters "instructed the men positively as to their rights" and that in these statements the Company "fully communicated its attitude, and in effect offered [the men]

its protection [against coercion by the licensed personnel]." The court held that the Board's contrary conclusion was "error as a matter of law."

We submit that in thus rejecting the Board's finding that the statements in the Ferbert letters did not dispel the effects of the coercive conduct of the licensed officers the court below not only exceeded the scope of its reviewing power (*"Calculating a cumulative effect on employees is not a job for this Court"* (*National Labor Relations Board* v. *Stowe Spinning Co.*, 336 U. S. 226, 231)), but that the inference which it drew finds far less support in the record than that which was drawn by the Board.

The Ferbert letters (R. 803; 57, 743–746) although not violative *per se*, must be considered in the light of their use and application by the Company's supervisors. It is certainly inferable from their conduct that the ships' officers saw in the letters opposing unionization apparent approval and authority for their conduct. The more plainspoken warnings of the officers[78] could

[78] That these officers were not as careful of their choice of language as the Company's president is apparent from the record. Compare, for instance, President Ferbert's "it is not necessary to join any labor organization" (R. 744) with Captain Lehnes' "The Company does not hire any Union men aboard any of their ships" (R. 14), or Captain Wallace's "I don't want any part of [the union] on my ship" (R. 280). Similarly, Ferbert's statment, "In deciding whether you wish to select the National Maritime Union as your bargaining

hardly help but be regarded by the men as a reflection of the policy of opposition stated in the letters. It would hardly be reasonable to expect the men to assume that the chief officers of the ships were violating company instructions.

The statement in the letters "No one must threaten you" (R. 880), which was construed by the court below as an assurance to the employees against threats from the licensed personnel under whom they served, when read in context, may well have been meant to refer not to coercion by officers, of which the Company was allegedly unaware, but to coercion which the Company contended was being practiced by union organizers (see R. 382, 383).

The "neutrality" statements contained in the Ferbert letters certainly did not suffice to preclude the Company from gaining forbidden advantage from the illegal restrictions imposed by the licensed personnel. These ships' officers were not "minor supervisors" whose individual views might lightly be disregarded by employees if contrary to an unequivocal policy stated by management. Cf. *National Labor Relations Board* v.

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representative or not, you should make up your mind whether representation by the Union will better serve your needs in your relationship with the Company" (R. 745), could have been read by the employees in the light of the statement by Captain Wallace "* * * you CIO people, you are going to cause these men to lose their bonus. * * * Pittsburgh isn't going to give them the bonus * * *" (R. 280).

Montgomery Ward & Co., 157 F. 2d 486, 501 (C. A. 8), and cases cited. On board ship the licensed personnel have complete control of employment conditions (R. 671). It is their policies, not those of higher management whom the seamen rarely, if ever, see, which are controlling.

The court below misconceived the nature of the Board's finding concerning the relation of the Ferbert letters to its finding that the acts of the ships' officers were cut from the same cloth. The court below stated: "The entire case is bottomed by the Board on what it finds to be the adoption by the [Company] of a general course of coercive conduct" which "is based largely upon the letters signed by [the Company's] president A. H. Ferbert" (R. 877). The court below attributed much greater significance to the letters than did the Board. The Board did not find, as the court assumed, that the letters created the pattern of violative conduct which was followed by the Company's licensed officers. The Board found that the letters were not violative *per se*, and that only when considered in the light of and in context with the pattern which was already found to exist did they assume an illegal character (R. 828–829, 855). The pattern was established by "the threats, the acts of intimidation and discrimination, and the restraints imposed upon union organizers" (R. 828), and by the similarity in the

tactics used by the Company's supervisors on each of the seven ships involved herein (see pp. 126–127, *supra*). And, contrary to the assumption of the court below, the Board did not treat the Ferbert letters as necessary to establish the Company's liability for the pattern of conduct of its supervisors.

The court below (R. 878–879) sought to discredit the Board's finding with respect to the Ferbert letters by disagreeing with the Board's conclusion that certain statements in the letters "contained implications which were misleading" to the employees (R. 806). But the Board was right and the court below wrong.

The Board found (R. 806) that the letters distorted and misstated the effect of the Union's "rotary hiring" policy upon promotions. The letter of June 1, 1944, asserted that under that policy "if you ship out as deck-watch, you cannot be promoted to a watchman or lookout when there is a vacancy" (R. 745). This was not true as to vacancies occurring on the same ship (R. 122–123), but only as to transfers to other vessels. If the evidence is read with this distinction in mind, there is no difficulty and no conflict. The court below failed to note the distinction, and for that reason erroneously treated testimony relating to promotions involving transfers as applying to all promotions.

The Board also found that the "letters were intended and designed to discredit the Union by impressing upon the employees the thought that they could gain no benefits or advantages through collective bargaining not obtainable through individual bargaining" (R. 828). This finding was based upon the statements in the letter of May 2, 1944 (R. 743), that "this Company pays the same wages that are paid on all Great Lakes bulk freighters, regardless of whether they have a Union contract," and "neither the Union nor the Company has today control over what wages shall be paid" and "wage rates * * * have been frozen by the government." The Board found that the letter was designed to leave the implication that the Union would be powerless to secure any wage increase because of governmental wage stabilization policy. But the record shows, and the Company knew, that the wage stabilization policy did not preclude all upward wage adjustments, and indeed that the Union had succeeded in obtaining such adjustments for employees it represented (R. 105–112).

The court below disagreed with the Board's finding (R. 806) that the letter of June 1 represented that wages was the only term of employment which the Union as collective bargaining agent could effect. This disagreement was based upon a portion of the letter of May 2, 1944 (R. 743), which stated that if the Union won the election it

would have the "sole and exclusive right to represent you on all matters regarding rates of pay, wages, hours of employment and other conditions of employment." Read in context, however, this statement could reasonably be interpreted as not calculated to dispel the impression that only in the matter of wage rates could Union representation possibly benefit the employees, but rather to indicate the wide sweep of matters as to which, by selecting the Union, the employees would lose the right to represent themselves. The Board was entitled to have its reasonable finding as to the effect of the letter upon the employees accepted by the court below, even if another interpretation of the letter was possible. *Cf. Federal Trade Commission* v. *Pacific Paper Assn.*, 273 U. S. 52, 62, 63.

That the Board's treatment of the Ferbert letters as evidence of unfair labor practices was proper under the law as it stood prior to the enactment of Section 8 (c) is established not only by the decision of this Court in the instant case but by numerous decisions in other cases.[79] Neither in this Court nor in the court below did the Government concede that the subsequent enactment of Section 8 (c) could be given retro-

[79] See, *e. g.*, *National Labor Relations Board* v. *Virginia Electric & Power Co.*, 314 U. S. 469, 477; *Thomas* v. *Collins*, 323 U. S. 516, 537–538; *National Labor Relations Board* v. *Mt. Clemens Pottery Co.*, 147 F. 2d 262, 264 (C. A. 6); *National Labor Relations Board* v. *Thompson Products, Inc.*, 130 F. 2d 363, 368–369 (C. A. 6).

active effect so as to invalidate the Board's findings with respect to the letters as evidence of the unfair labor practices in this case (see, pp. 44, 46, *supra*). The Government's concession went no further than to state that since Section 8 (c) immunized letters such as these which are published while 8 (c) is in effect, the Board's order does not preclude their future repetition.

3. The Fact That Evidence Related Only to 7 of 73 Ships Does Not Exculpate the Company

Finally the Company argues, and the court below held, that since evidence of unfair labor practices was adduced as to only seven of its seventy-three ships, the violations were of a sporadic nature and could not properly be attributed to the Company. This contention is difficult to reconcile with the concession of the court below (R. 880) that "coercive acts actually performed even on one ship would render the employer liable."[80]

From the fact that "no complaint whatever has been made as to some 540 supervisors on 66 ships" the court below drew the inference that on these ships the Company's "instructions [to its officers to be impartial] were acted upon" (R. 880). We submit, however, that in the absence of any concession by Board counsel that no violations occurred on the remaining ships, and in

[80] Counsel for the Company made the same concession before this Court at the last argument.

view of the facts that the trial took place during wartime when potential witnesses were scattered and unable to appear, that the testimony relating to the seven ships sufficiently disclosed that the officers on all of these ships had violated the Act in much the same manner, and that further testimony of the same character regarding other officers in other ships might well have been regarded as merely cumulative, the mere failure to adduce evidence with respect to the other ships does not bear the significance attached to it by the court below.

The hearings in this case took place between July and October 2, 1945, about a year and a half after the organizing campaign leading up to the 1944 election, when most of the unfair labor practice incidents occurred. During almost the entire period the country was actively engaged in a war, and seamen were in great demand and were constantly shifting from the Lakes to the high seas (R. 241–242). It cannot, therefore, be assumed that the Board had available all witnesses who might have supported its case. Indeed, as counsel for the Union stated at the hearing "The Union has made every effort to find every seaman involved in these ships in the year 1944, during the period covered by the complaint. Except for the ten or eleven witnesses we have managed to produce now, these were the only ones we could produce after a search over a period of a year.

We have been unable to find any additional ones. These men are shipping. They are shipping on both oceans. It is not an easy matter to bring these men to a hearing just when we want them brought. The Company has a fairly easy time bringing its masters and mates. But you can't bring unlicensed men who are sailing under the orders of the War Department. It is almost miraculous that we have brought as many as we have" (R. 242). Board counsel added, "I would like to say, further, that we have affidavits sworn to before agents of the Board of several others, whom we cannot secure for this hearing" (*Ibid.*). He also stated, "I have a good many affidavits of men who are scattered on the seven seas. It is impossible to produce them" (R. 241). The Company's repeated contention that no evidence was adduced as to the other ships because no unfair labor practices had been committed on them is therefore unwarranted under the circumstances. In view of the nature of the industry and the wartime conditions prevailing during that period, no inference in either direction can properly be drawn.

In any event such additional evidence, even if available, would have been cumulative and therefore not decisive. The printed record herein contains more than 860 pages, and the hearing took almost ten days, including evening and night sessions, and was spread over a period of more than two months. Additional evidence of unfair labor

practices similar to those already proven would have extended the hearing unreasonably, and would have served no useful purpose. Cf. *N. L. R. B.* v. *Donnelly Garment Co.*, 330 U. S. 219, 232.

Since the Board found on substantial evidence that the Company had engaged in violative practices on seven ships, its remedial order based upon such findings must be sustained. The question is not how many employees were coerced or discriminated against but whether the Company, through its supervisors, did interfere with, restrain, or coerce or discriminate against *any* of its employees in violation of Section 8 of the Act. If there is evidence to sustain the Board's findings that the Company did engage in violative practices with regard to the 250 crewmen on the seven ships about which testimony was adduced, the Company must be held responsible even though no evidence was produced relating to the remainder of the fleet.

The courts have not heretofore questioned the validity of Board orders because unfair labor practices were shown to have occurred on a few ships of a fleet. Thus, in *South Atlantic Steamship Co.*, 12 N. L. R. B. 1367, unfair labor practices were proven to have occurred on only one of a fleet of six ships. Nevertheless the company was held liable by the Board, was directed to post compliance notices on all its docks and vessels (12 N. L. R. B., at p. 1383), and

the order was enforced in full. *South Atlantic Steamship Co.* v. *N. L. R. B.*, 116 F. 2d 480 (C. A. 5), certiorari denied, 313 U. S. 582. Only two ships out of twenty-eight were involved in the case of *The Texas Company*, 42 N. L. R. B. 593, but the Board there too found the company responsible, and ordered posting on all its ships and docks (42 N. L. R. B., at p. 609). In decreeing enforcement of the Board's order, *The Texas Company* v. *National Labor Relations Board*, 135 F. 2d 562, the Court of Appeals for the Ninth Circuit stated (at p. 563):

> This evidence is sufficient to warrant the Board's findings of interference, restraint and coercion. * * *. The Board was within its powers in concluding that these discharges were *pursuant to the anti-union attitude of petitioner* as shown from the testimony concerning Baldwin's [a mate] statements. * * *. Since two vessels and their officers are involved, it is no abuse of the Board's discretion in ordering the usual notices posted in several places accessible to petitioner's employees. [Italics supplied.]

Similarly in *Waterman Steamship Corporation*, 7 N. L. R. B. 237, unfair labor practices were proven to have taken place on only three ships of a fleet of twenty-six.[81] The Board nevertheless directed the company to post compliance notices on all its ships,

[81] Although the number of ships owned by the Waterman Company does not appear in the Board's decision, it is set forth in another decision in a representation case reported

and this Court directed enforcement of that order. *National Labor Relations Board* v. *Waterman S. S. Corp.*, 309 U. S. 206, 210, 221. And in *Isthmian Steamship Company*, 22 N. L. R. B. 689, where unfair labor practices were proven in connection with but one of twenty-seven ships, the Board's findings were held sufficiently supported and the order enforced. *National Labor Relations Board* v. *Isthmian Steamship Co.*, 126 F. 2d 598, 601 (C. A. 2). In none of the cases cited above did the courts consider the possibility that unless violations were proved on more than a few ships—and in each case the number involved is comparable percentage-wise to those in the instant case—the company could not be held liable for those unfair labor practices which were found to have taken place. See also, *National Labor Relations Board* v. *Phillips Gas & Oil Co.*, 141 F. 2d 304, 306 (C. A. 3); *National Labor Relations Board* v. *Hollywood-Maxwell Co.*, 126 F. 2d 815, 819 (C. A. 9).[82] The amended act made no change in the applicable law in this respect. *National Labor Relations Board* v. *Public Service Transport*, 177 F. 2d 19, 124 (C. A. 3), vacated on other grounds, 125.

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six months later and covering approximately the same period involved in the unfair labor practice case. *Waterman Steamship Corporation*, 10 N. L. R. B. 1079, 1080.

[82] It is interesting to note that in the *Hollywood-Maxwell* case, the Board found that the employer had committed unfair labor practices in one plant, and limited the application of its order to that plant. The court, *sua sponte*, modified the Board's order to make it applicable to all plants operated by the company (126 F. 2d, at p. 819).

Even if the Company had offered testimony as to the complete absence of any violative conduct by the officers of sixty-six vessels, such evidence, if admissible, would not affect the Board's determination that as to the seven ships here involved unfair labor practices were proven. This would be sufficient to justify a fleet-wide remedial order. Similar conclusions have been reached in connection with violations of other statutes. Thus in *Bowles* v. *Montgomery Ward & Co.*, 143 F. 2d 38, the Court of Appeals for the Seventh Circuit affirmed an injunction restraining further violations of the Price Control Act, although evidence was adduced that violations of a few regulations had been found in only twenty-five out of 640 stores owned by the company. The injunction itself was nation-wide in scope,[83] and prohibited violations of any regulations under the act. And in *United States* v. *General Motors Corp.*, 121 F. 2d 376, certiorari denied, 314 U. S. 618, the same court affirmed the conviction of the corporation of violation of the antitrust laws based upon the testimony of forty-seven dealers who testified they were coerced, although the corporation offered to produce the remainder of its 15,000 dealers in the United States to prove the contrary (121 F. 2d, at pp. 397–398). Thus,

[83] Although the opinion of the court does not mention the territorial scope of the order, the record reveals that it was applicable to all operations of the company throughout the country.

if the employees on the other sixty-six ships had been called to testify, and had given testimony that there were no coercive acts committed, the Board would nevertheless be justified in rejecting such evidence as immaterial and in holding the Company responsible for the unfair labor practices committed on the seven ships concerning which positive evidence of violative conduct was adduced. Cf. *National Labor Relations Board* v. *Donnelly Garment Co.*, 330 U. S. 219, 223–230.

Since negative testimony could not affect the validity of the Board's findings, obviously the failure to adduce such testimony should have no greater probative value. And if the Board's findings of restraint and coercion may stand in the face of such testimony (330 U. S., at p. 231), then they must be sustained where no other evidence is adduced. *A fortiori* the failure of the Board to produce additional evidence to show that unfair labor practices were committed on the other sixty-six ships cannot raise an inference that the Company was not engaging in a course of conduct designed to interfere with, restrain and coerce its employees in violation of Section 8 of the Act.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision below should be reversed and the cause remanded with directions to enforce the Board's order in full.

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SEPTEMBER 1950.

APPENDIX

1. The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are as follows:

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

(b) Whenever it is charged that any person has engaged in or is engaging in

any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. * * * In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and

order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review * * * by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such a court a written petition

praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

* * * * *

2. The relevant provisions of the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C. Supp. I, 141 *et seq.*) are as follows:

* * * * *

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

"(3) by discrimination in regard to hire or tenure of employment or any term or

condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * *

"(c) The expression of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

* * * * *

"SEC. 10. (b) * * * Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U. S. C., title 28, secs. 723–B, 723–C).

"(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without

back pay, as will effectuate the policies of this Act: * * *

* * * * *

"(e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive."

* * * * *

SEC. 104. The amendments made by this title shall take effect sixty days after the date of the enactment of this Act, except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title may be exercised forthwith.

* * * * *

3. The relevant provisions of the Administrative Procedure Act (60 Stat. 237, 5 U. S. C. 1001, *et seq.*) are as follows:

* * * * *

SEC. 7 * * *

(c) *Evidence.*—Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. * * *

* * * * *

SEC. 10 (e) *Scope of review.*—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action,

findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

* * * * *

SEC. 12. * * * This Act shall take effect three months after its approval except that sections 7 and 8 shall take effect six months after such approval, the requirement of the selection of examiners pursuant to section 11 shall not become effective until one year after such approval, and no precedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

Approved June 11, 1946.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

THE PITTSBURGH STEAMSHIP COMPANY,
Respondent.

RESPONDENT'S ANSWER TO PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 732

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

THE PITTSBURGH STEAMSHIP COMPANY,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR WRIT OF CERTIORARI

Questions Presented for Review

Two questions for review are stated in the body of the petition and two more in a footnote to the first question on the assumption that it is answered in the affirmative. We restate and renumber the questions in their proper sequence.

1. "Whether the scope of judicial review of findings of fact made by the National Labor Relations Board has been changed by the Administrative Procedure Act or the Labor Management Relations Act".

2. If that question is answered in the affirmative, "whether the Board's findings are supported by substantial evidence on the record considered as a whole".

3. If the answer to the first question is in the affirmative, "whether the scope of judicial review is so 'broadened' as to permit a court to substitute its own findings and inferences for the reasonable findings and inferences of the Board".

4. "Whether procedural changes made by the Administrative Procedure Act and the Labor Management Relations Act which govern the admissibility of evidence in proceedings before the Board and the standards to be adopted by the Board in making decisions apply to hearings concluded and decisions made by the Board prior to the effective date of these statutes".

We consider them in the above order.

I.

The First Question is Academic.

Section 10(e) of the Administrative Procedure Act commands the reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be * * * (5) unsupported by substantial evidence" and in making that determination to "review the whole record".

Section 10(c) of the Taft-Hartley Act requires the findings of the Board to be supported by "the preponderance of the testimony" and Section 10(e) of said Act provides that "The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive".

This cause was remanded to the Court of Appeals for a consideration of "the applicability and possible effect of either or both of these statutes" (337 U.S. 656, 661).

There is no contention that the statutory requirements above quoted are not applicable.

Since the statute now expressly requires the reviewing court to "review the whole record" in determining the sufficiency of the evidence, it is wholly immaterial whether the court already possessed that power or whether, as Judge

Learned Hand observed in *National Labor Relations Board* v. *Universal Camera Corporation*, (179 F. 2d 749, 752), "The most probable intent in adding the phrase, 'on the record considered as a whole', was to overrule what Congress apparently supposed—perhaps rightly—had been the understanding of some courts: i.e., that, if any passage could be found in the testimony to support a finding, the review was to stop, no matter how much other parts contradicted, or outweighed it".

The important consideration is that the statute now expressly commands reviewing courts to exercise the power "to review the whole record" in determining the sufficiency of the evidence. It cannot matter whether they already possessed that power.

In the case just cited and the cases in other circuits in which the view was expressed that the scope of review had not been changed by statute, the courts did "review the entire record" in determining whether there was substantial evidence to support the findings.

This Court reversed on the former review because it was "constrained to reject the court's conclusion that an objective finder of fact could not resolve all factual conflicts arising in a legal proceeding in favor of one litigant" (337 U.S. 659). It remanded the cause for the Court of Appeals to consider the applicability and effect of the statutes. As Judge Allen observed, it could not have intended the Court of Appeals to pass upon the effect of the statute "*in vacuo*".

There is nothing in the opinion of this Court to indicate that it had reviewed the whole record.

II.

Whether the findings are "supported by substantial evidence on the record considered as a whole" is the real question in the case.

Judge Allen's thorough and accurate analysis of the record and her cogent and lucid statement of the grounds

of the decision should relieve this Court of the burden of reviewing the whole record.

III.

The Court of Appeals did not "substitute its own findings and inferences for the reasonable findings and inferences of the Board".

It found "on the record considered as a whole" that the Board's findings were not supported by substantial evidence (R. 877, 878, 880, 882, 884).

IV.

The fourth question, number two in the petition, is not presented by the record.

A. *The Ferbert Letters.*

The petitioner conceded in the Court of Appeals that Section 8(c) of the Taft-Hartley Act "immunized" those letters on the ground "that the reviewing court cannot restrain action which, under the 1947 Act, is no longer illegal" (R. 875).

The Court of Appeals did not hold that the letters could not be considered at all "because they contained no direct threat or promise of benefit", as assumed by the petitioner (p. 8).

On the contrary, it reviewed the whole record relating to the subject; the statements relating to wages and rotary hiring found by the Examiner to be untrue; the testimony of Union Vice-President Lawrenson that the statement relating to rotary hiring was a "downright misstatement", which the Examiner found to be uncontradicted; Lawrenson's own contradiction of it; the statute proving the truth of the statements respecting wages; the Union contract proving the truth of the statements respecting rotary hiring; the uncontradicted testimony of three witnesses that at the Cleveland meeting "in March, 1944, just before the opening of navigation, the petitioner unequivocally in-

structed its officers that they must maintain strict impartiality and not interfere with Union activity as long as such activity did not conflict with discipline or proper operation"; the letter to the Captains instructing them that there must be "no partiality"; and the Examiner's error of law in ruling that those instructions did not absolve the respondent of liability because they "were never communicated to the employees". As the result of that review of the whole record, the Court of Appeals found that the findings that the letters were "an integral part of a general course of coercive conduct" are "supported by no evidence" (R. 877-880).

B. *Incompetent Evidence "under the revised standards of the Taft-Hartley and Administrative Procedure Acts".*

The Court of Appeals did not deny enforcement of the Board's order because it admitted hearsay evidence.

In discussing the discharge of Shartle, Judge Allen referred to the fact that Shartle was allowed to testify that "the men on the ship, the electricians, the firemen, the oilers, the coal passers, the steward, the second cook, the porter, the deck hands, the deck watch, and the watchman" assured him that he was competent and that he had been discharged for Union activity, and in a footnote pointed out that "hearsay testimony was repeatedly admitted by the Examiner over objection and made the basis of important findings" (R. 882).

However, the case was not decided on that ground. The evidence relating to the discharge of Shartle was reviewed, with the conclusion that "reading the case in the light of the whole record, we conclude that Shartle was discharged for cause and that the finding that he was discharged for Union activity is not supported by reliable, substantial and probative evidence" (R. 882). In fact, there is nothing in the record even to create a suspicion that Shartle was discharged because he was a Union organizer, but if there were such a suspicion it would disappear "on a review of the whole record".

Thus the question posed by the petitioner, whether procedures already taken are affected by changes in the law, is not involved in respect of either the Ferbert letters or the admission of incompetent evidence.

In conclusion, the statement in Paragraph 4 of the petition (p. 10) that the Court of Appeals substituted "for the reasonable findings of the Board its own judgment concerning the credibility of witnesses, the weight of the evidence, and the inferences to be drawn therefrom" is a gross misrepresentation of an unanimous opinion rarely surpassed for cogency, accuracy and thoroughness.

The case was not decided on either the credibility of witnesses or the weight of evidence. The Court's final conclusion was thus expressed:

> "We think that to ignore the complete absence of union trouble on 66 ships where the positive instructions were that the rights of the men should be protected and where the basis of the holding against the employer is that it engaged in a general course of anti-union conduct, is to ignore the mandate of the two statutes that decision shall be based upon 'the record considered as a whole' ". (R. 884.)

We respectfully submit that the petition should be denied.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

THE PITTSBURGH STEAMSHIP COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF THE RESPONDENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 42

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

THE PITTSBURGH STEAMSHIP COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF THE RESPONDENT

Opinions Below

The opinion of the Court of Appeals on the first review is reported in 167 F. 2d 126. The opinion of the Supreme Court remanding the cause to the Court of Appeals for further consideration by it is reported in 337 U.S. 656. The opinion of the Court of Appeals on the remand (R.870-884) is reported in 180 F. 2d 731.

Jurisdiction

The judgment of the Court of Appeals was entered February 17, 1950 (R. 868). The petition for a writ of certiorari was granted on May 8, 1950 (R. 886). The

jurisdiction of this Court is invoked under Section 1254 of 28 U.S.C., as codified June 25, 1948.

Questions Presented by the Petition

1. "Whether the scope of judicial review of findings of fact made by the National Labor Relations Board has been changed by the Administrative Procedure Act or the Labor Management Relations Act".

2. If that question is answered in the affirmative, "whether the Board's findings are supported by substantial evidence on the record considered as a whole".

3. If the answer to the first question is in the affirmative, "whether the scope of judicial review is so 'broadened' as to permit a court to substitute its own findings and inferences for the reasonable findings and inferences of the Board".

4. "Whether procedural changes made by the Administrative Procedure Act and the Labor Management Relations Act which govern the admissibility of evidence in proceedings before the Board and the standards to be adopted by the Board in making decisions apply to hearings concluded and decisions made by the Board prior to the effective date of these statutes".

The foregoing are the questions as stated in the petition for certiorari, the second and third in a footnote.

The Petitioner now states three main questions and five questions subsidiary to the third, which is "whether the Board's findings are supported by substantial evidence on the record considered as a whole" (Br. p. 2).

As we shall later show, none of the five subsidiary questions nor the first of the main questions, as now stated by the Petitioner, are presented by the record.

The Court of Appeals did not apply either of said Acts retroactively, it did not decide the case on the credibility of witnesses or resolve conflicts in the testimony, it did not decide that the Respondent is not "responsible for unfair labor practices committed by the chief officers on

its ships", it did not decide that the Respondent "can escape responsibility because the evidence related only to seven out of seventy-three ships", it did not deny enforcement because the Board relied upon "incompetent or hearsay evidence".

Throughout its brief the Petitioner disregards the charge and the ultimate conclusion of fact upon which the Board's order rests, namely, that the Respondent engaged in a "planned" and "integrated" course of coercive conduct to defeat the Union in the election (R. 4, 824, 828, 830).

The decisive question in the case is whether there is substantial evidence on the record considered as a whole that the Respondent planned and engaged in a course of coercive conduct to defeat its employees' right of self-organization.

We shall deal with that question first.

Statutes Involved

The pertinent provisions of the Administrative Procedure Act (60 Stat. 237, 5 U.S.C. § 1001 *et seq.*) and of the Taft-Hartley Act—Labor Management Relations Act, 1947—(61 Stat. 136, 29 U.S.C. Supp. I, § 141 *et seq.*) are as follows:

Administrative Procedure Act:

> "Section 10. [5 U.S.C.A. § 1009]. *Judicial review of agency action*—
>
> • • • • •
>
> "(a) *Right of review*—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.
>
> • • • • •
>
> "(e) *Scope of review*—• • • the reviewing court shall • • • (B) hold unlawful and set aside agency action, findings, and conclusions found to be • • • (5) unsupported by substantial evidence • • •" and in making that determination shall "review the whole record • • •".

Taft-Hartley Act:

"Section 8. [29 U.S.C.A. § 158]. * * *

"(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

"Section 10. [29 U.S.C.A. § 160]. * * *

"(b) * * * Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to sections 723b and 723c of Title 28."

"(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter: * * * If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. * * *"

* * * * *

"(e) * * * The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive".

Statement of the Prior Proceedings

On December 15, 1943, the Respondent consented to an election on its seventy-three ships to determine whether its 2,000 unlicensed employees should be represented by the National Maritime Union (R. 757). The navigation season on the Great Lakes opened the following April and the election was conducted on each ship under the direction and supervision of the Petitioner between June 6 and 15, 1944 (R. 802).

The election went against the Union, but there were 720 votes for it. No complaint was made to the Respondent at the time of any coercive or anti-Union conduct and no objection was made to the Board, which certified the result (R. 761).

More than a year later and on July 10, 1945, the Petitioner issued its complaint charging unfair labor practices and that the Respondent had, from on or about December 15, 1943, to on or about June 17, 1944 "engaged in a plan and continuous course of conduct" which had "interfered with, restrained and coerced its employees in the exercise of their rights guaranteed them in Section 7" of the National Labor Relations Act and that one Shartle had been discharged for Union activities (R. 4-5).

After a long trial, the Examiner submitted his report and findings (R. 799-842). He found "that during the 1944 sailing season, the Respondent, through its agents, engaged in a course of conduct violative of the Act. Although the Respondent's anti-Union conduct took a variety of forms, all were integrated, it is found, by a common purpose and plan—to defeat the Union in the election, and, beyond that, to discourage and frustrate the organizational efforts of the Union" (R. 823-4), that expressions of Union hostility by a few Supervisors on seven ships "constituted an integral part of the Respondent's broad pattern of coercive conduct", and that "Likewise forming an integral part of the Respondent's entire course of coercive

conduct were the Ferbert letters" (R. 828), that the Respondent's instructions to the Supervisors to maintain strict neutrality should be disregarded because they "were never communicated to the employees" (R. 830) and that "It is found that the statements and acts outlined above constituted integral parts of a course of conduct, engaged in by the Respondent, which the Respondent intended should, and which in fact did, interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act" (R. 830).

He also found that the claim of Shartle's incompetence "was merely the pretext for the discharge, and that the real reason for the discharge lay in Shartle's Union activities * * *, thereby discouraging membership in the Union, and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act" (R. 838-9).

The Board accepted the Examiner's findings in bulk, except it found that "the Ferbert letters are not unlawful *per se*", but, as the Examiner found, that "they constitute an integral and inseparable part of the Respondent's otherwise illegal course of conduct and when so viewed they assume a coercive character * * *" (R. 855).

The Board did not, as the Petitioner says (Br. p. 27), "agree[d] with the Trial Examiner as to the import of the 'Ferbert letters', finding that, although they were not unlawful *per se*, when considered in the context of the Company's other illegal acts and statements they 'assume[d] a coercive character which is not privileged by the right of free speech' ".

On the contrary, the Board flatly rejected the Examiner's premise that the letters were unlawful *per se*, but adopting his conclusion based thereon, it found, as above, that "so viewed", i.e., as an integral part "of otherwise unlawful conduct", they assume a "coercive character".

On the first review of the Board's order, the Court of Appeals denied enforcement on the ground that it was based on a decision which "lacks all semblance of fair judicial determination" (R. 872). It said that "the un-

varying repudiation of every witness for the petitioner * * * along with the consistent exaltation of every union witness * * * destroys completely any confidence that might otherwise be placed in the findings of the trial examiner and stamp[s] them as arbitrary" (337 U. S. 656, 658).

This Court reversed, saying: "We are constrained to reject the Court's conclusion that an objective finder of fact could not resolve all factual conflicts arising in a legal proceeding in favor of one litigant" (*id.* 659).

It refused the Board's request to remand the cause "with instructions to enforce the Board's order", but did remand it for the Court of Appeals to consider the "applicability and possible effect of" said statutes (*id.* 661-2).

The Court of Appeals assumed that this Court did not intend it "to pass upon that question *in vacuo*" (R. 877). It reviewed the whole record with unusual care, thoroughness and accuracy and its final conclusion was that to hold that the Respondent "engaged in a general course of anti-Union conduct is to ignore the mandate of the two statutes that decision shall be based upon 'the record considered as a whole' " (R. 877-884).

It specifically found that the finding of the Examiner that the Ferbert letters "formed an integral part of a general course of coercive conduct", is "supported by no evidence" (R. 878) and that the finding that Shartle "was discharged because of Union activity is not supported by reliable, substantial and probative evidence" (R. 882). Shartle gave hearsay testimony that he was assured by a number of his shipmates, in response to his statement to them that he "was being fired for being incompetent", that he was not incompetent but must have been discharged for Union activity (R. 173). That is the sole evidence in support of the finding of the Examiner.

Facts

We were at war. The Respondent was attempting to transport all the iron ore that it could from the upper

lake ports in aid of the war effort. Naturally, it was anxious to avoid any conflict with the N.M.U. and took particular pains not to give it any excuse for a work stoppage.

This Court said on the former review that there was testimony "tending to show that it had strictly enjoined its licensed personnel to remain wholly neutral in the weeks leading up to and including the Board election" (337 U. S. 656, 657-8).

In fact, the undisputed testimony of several witnesses was that at the customary meeting of the Masters and Chief Engineers just before the navigation season opened, Mr. Ferbert, the Respondent's President, informed them of the prospective election and positively instructed them that they must maintain strict impartiality and must not interfere with any Union activities as long as they did not interfere with discipline or proper operation (R. 361, 484, 552, 666, 678).

Those verbal instructions were confirmed by letters to the Masters instructing them to cooperate with the Board and saying, among other things:

> "• • • The important thing in this election is to see that everyone votes; therefore, no matter how you believe a man is going to vote, see that he remains on the ship until the representative of the National Labor Relations Board comes to conduct the election • • •.
>
> • • • • •
>
> "• • • You must see to it that whatever is addressed to the employes is delivered to them. There must be no partiality." (R. 795-6.)

The Examiner did not venture to find that those instructions, verbal and written, were not given in good faith, but declined to consider them for the stated reason that they "were never communicated to the employees" (R. 830), a ruling which the Court of Appeals correctly held was erroneous as a matter of law (R. 879).

Mr. Ferbert also took the precaution to write two letters to each of the unlicensed seamen, in which he stated certain facts respecting so-called "rotary hiring" and the freezing of wages during the war emergency and advised them that the election was solely their business, that their decision would not affect their position with the Company, that it was their duty as well as their privilege to make up their own minds after careful consideration and discussion with their fellows and to vote accordingly, in order that the will of the majority might be ascertained (Bd. Exs. 2-3, R. 743-746). He said, among other things:

> "• • • Questions such as these should be carefully thought about and discussed among you so that your selection may be an intelligent and a wise one. No one must threaten you in this election. It is your privilege to make up your own mind as to how you should vote.
>
> "One thing more • • • we are now all engaged in carrying iron ore for the war effort which we want to finish just as fast as we can. Let us allow nothing to interfere with this objective, and if the majority select the Union, let us all be bound by it and cooperate." (R. 745-6.)

It is admitted that the Union had at least one Union organizer on every ship. Three of the seven who were called as witnesses were salt-water seamen who obtained employment from the Respondent to organize its employees and, despite the war emergency, quit their jobs as soon as the election was over to return to the sea (R. 64, 242, 285). Another, Lee, had his training at sea (R. 139).

Of the 720 friendly seamen, who voted for the Union, including at least 73 partisan organizers, only four, who were not organizers, were called as witnesses, — Zmrazek (R. 41), Vogt (R. 82), Jones (R. 224), and Anderson (R. 248). The sporadic incidents to which they testified were trivial and, as appears from their own testimony, none of them thought that he was being coerced.

Vogt's testimony related to conversations with Captain Lawless on the Bunsen and the Cornell after he first entered the Respondent's employ on October 18, 1944, four months

after the election (R. 83). That certainly eliminates one of the seven ships on which isolated incidents are claimed to have occurred.

The Petitioner called only seven of at least seventy-three partisan organizers—Babin (R. 13), Weissflog (R. 53), Lee (R. 124), Shartle (R. 168), Vogel (R. 213), Herrick (R. 233) and Sims (R. 274). Shartle testified that, when his Master and First Mate told him that he was discharged for incompetence, he informed some of his shipmates, deck hands and the like, that he "was being fired for being incompetent", and that they assured him that he was not incompetent but that his discharge must be for Union activities (R. 173-4). Vogel took Shartle's place as an organizer. The Petitioner claims that he was also discharged by First Mate Dobson, who discharged Shartle. But Vogel admits that he quit his ship voluntarily at the end of a voyage and that Dobson wanted him to stay on (R. 224). They had had words about which they disagree, when Dobson overheard a quarrel between Vogel and a Union member over dues (R. 215, 504).

Herrick's testimony is so inconsequential that the Petitioner's brief does not even refer to it. Sims' testimony is equally inconsequential, though the Petitioner does refer to it (Br. pp. 12-13).

That leaves Babin, Weissflog and Lee, whom the Petitioner features (*id.* pp. 5-10).

They were the only organizers whose unionizing activities were restrained or limited in any way. All the others were left free to pursue their unionizing efforts at will.

According to the Petitioner's own evidence, the Union was permitted to conduct an aggressive unionizing campaign on the Respondent's ships for ten weeks preparatory for the election. It was permitted to post whatever it wished on the bulletin boards (R. 298-9), freely to circulate whatever literature it wished (R. 13, 796) and even to hold Union meetings on shipboard (R. 244).

That explains the paucity and inconsequential nature of the Petitioner's evidence, revealed by its own statement of facts (Br. pp. 5-27).

SUMMARY OF ARGUMENT

I. The whole record demonstrates beyond cavil or doubt that the Respondent did not plan or engage in a general course of coercive conduct to influence the election.

The finding that it did so was the ultimate conclusion of fact essential to support the order.

The testimony that the Respondent strictly enjoined the Supervisors to remain wholly neutral was undisputed (R. 361, 484, 552, 666, 678). It was confirmed by Mr. Ferbert's letter of instructions to the Masters saying, among other things, *"There must be no partiality"* (R. 796).

The Examiner did not find that those instructions were not given in good faith. Instead, he disregarded them solely on the stated ground that they were not communicated to the unlicensed seamen (R. 830).

It thus stands established as a matter of law that the instructions were, in fact, given.

Those instructions were so scrupulously observed that the Petitioner was unable to tender any criticism of a word spoken or an act done by a single Supervisor on 66 of the Respondent's 73 ships, and the incidents on one of the seven testified to occurred months after the election.

The Petitioner relied wholly on

(a) expressions of personal hostility to the Union by ten Supervisors on seven ships in arguments with Union organizers, which were denied by the Masters, Mates and Engineers involved; (b) the Ferbert letters to the unlicensed seamen; and (c) the discharge of Shartle.

(a) The only incidents of any substance aside from the discharge of Shartle involved three Union organizers on three ships and at most five Supervisors out of nearly 600.

(b) The finding of the Board itself establishes as a matter of law that the Ferbert letters were not in and of

themselves coercive or evidence of coercive conduct R. 855). They expressly and in unmistakable language informed the unlicensed seamen of their right to choose their representative without fear of reprisal or hope of favor and that *no one must threaten them in the election* (R. 745).

(c) Shartle alone out of 2,000 unlicensed seamen, including 73 organizers, was alleged to have been discharged for Union activity.

The only evidence that he was so discharged was his own hearsay testimony that his shipmates, when informed by him that he was being discharged for incompetence, assured him that he was not incompetent but must have been discharged for Union activity (R. 173). That testimony had no probative force.

It was proved and virtually found that he was incompetent (R. 836-7). He admits that that was the reason assigned for his discharge. The testimony of the Master and First Mate that they did not know when he was discharged that he was a Union organizer and that he was discharged solely for incompetence was undisputed.

The Examiner's finding that the few incidents testified to by seven Union organizers established "a pattern and a design" was erroneous as a matter of law (R. 827).

II. The Examiner and the Board committed at least five grave errors of law.

1. The Examiner disregarded the instructions to the Supervisors solely on the stated ground that they were not communicated to the unlicensed seamen.

2. He found that the fact that incidents occurred on every ship about which testimony was adduced established "a pattern and a design", although the Petitioner was only able to adduce testimony respecting a few sporadic incidents on seven ships out of 73.

3. He found that Shartle was discharged for Union

activity in the absence of even a scintilla of probative evidence to establish the fact and despite proof of Shartle's incompetence and undisputed testimony that he was discharged solely for that reason.

4. The Board adopted those findings but rejected the finding that the Ferbert letters were illegal *per se* and found that they assumed a coercive character solely because they were an integral and inseparable part of otherwise illegal conduct.

Such circuitous reasoning was erroneous as matter of law. It inferred perhaps the most important evidentiary fact from the ultimate conclusion of fact to be proved.

5. The Examiner found that the otherwise reasonable restraints imposed on Lee, Babin and Weissflog were unreasonable only because "the Respondent had no rule of general application prohibiting either solicitation or talking during working time".

So many and such grave errors were fatal to the Board's order.

III. Specifically answering Petitioner's Point III.

This is the only point under which the Petitioner attempts to deal with the merits.

It argues a number of untenable propositions which have no relation to the decisive question in the case and are not presented by either the petition or the record.

It deals scantily with the decisive question but admits that the acts relied on to show a general course of coercive conduct were found by the Board to have been done pursuant to "Company policy". Of course, that policy was not determined by the Supervisors.

IV. It is wholly immaterial whether reviewing courts possessed the inherent power which the statutes now command them to exercise.

It is now conceded that the review provisions of both Acts are applicable to this enforcement proceeding. They

require a review of the whole record in determining the sufficiency of the evidence. That is all we ask.

V. The Congress intended to and in fact did broaden the scope of judicial review by said Acts.

The Petitioner admits the intent but maintains that the Congress did not know how to effectuate that intent. It quotes the testimony of Dean Stason and Mr. McFarland before the Senate and House Judiciary Committees, respectively, as showing the true definition of substantial evidence, but the Congress adopted the changes recommended by them to make that definition effective, whereas many courts had applied it to some evidence thought to be substantial without considering how heavily such evidence was outweighed by countervailing evidence.

It suffices that the Congress has expressly commanded reviewing courts to hold unlawful and set aside agency action, findings and conclusions found to be unsupported by substantial evidence and in making that determination to review the whole record.

The Taft-Hartley Act was enacted to strengthen the review provisions of the Administrative Procedure Act in their application to the decisions of the National Labor Relations Board.

We rely on subsections (b) and (c) of Section 10 as explanatory of subsection (e) of that section. This is an enforcement proceeding subsequent to the Board's order and to the enactment of both statutes.

We claim that subsections (b) and (c) of Section 10 are to be read with subsection (e) of the same section to ascertain the meaning of the words "substantial evidence on the record considered as a whole" and that so construed those words mean the preponderating legal evidence in the record considered as a whole.

It happens that the Congress adopted the very recommendations of Messrs. McFarland, Stason and Vanderbilt to provide real judicial review without requiring the courts

to pass *de novo* on the credibility of witnesses or to resolve mere conflicts of testimony.

ARGUMENT

POINT I.

THE WHOLE RECORD DEMONSTRATES BEYOND CAVIL OR DOUBT THAT THE RESPONDENT DID NOT PLAN OR ENGAGE IN A GENERAL COURSE OF COERCIVE CONDUCT TO INFLUENCE THE ELECTION.

The finding that it did was the ultimate conclusion of fact on which the Board's order is solely based. That explains the Petitioner's strained effort to make out a general course of coercive conduct in which it admits in effect that the Board found that the acts involved were done pursuant to "Company policy" and were "in fact an integral part of a broad Company pattern (Br. pp. 125-136), although it contends that the Court of Appeals "erred in setting aside the Board's order" (*id.* p. 92) merely because of the "illegal conduct of its ship officers" (*id.* p. 120).

The Court of Appeals did not set aside the Board's order. It merely denied enforcement (R. 884) in proceedings subsequent to the proceedings resulting in that order.

Except for its lame attempt, as above, to make out a planned course of coercive conduct, the Petitioner's main reliance is on its claim of liability for isolated illegal acts or unfair labor practices committed without the Company's knowledge and contrary to its instructions to its Supervisors. We shall deal with that effort under a separate point.

1. The fact that the Respondent "strictly" enjoined its Supervisors to maintain a course of conduct of complete neutrality and non-interference with any Union activities which did not interfere with discipline or proper operation must be deemed established as a matter of law.

Not only was there testimony to that effect, as this Court said on the former review, but that testimony was

undisputed and the Examiner did not venture to find that those instructions, both verbal and written, were not given in good faith. Instead, he disregarded them for the sole reason that they were not communicated to the unlicensed seamen on the assumption "that such instructions were given" (R. 830).

As the Court of Appeals held, that was plainly an error of law.

Unlike the President of the Heinz Company (311 U. S. 514), Mr. Ferbert was not informed by the Union of the few incidents now complained of. Obviously, the Union did not deem them of sufficient consequence at the time of their commission to lodge a complaint with the Company. He had no reason to inform the unlicensed seamen of the instructions to their Supervisors. His instructions were given before the opening of navigation and later confirmed by letter. He had the right to assume that those instructions would be observed, as they were — indeed so scrupulously that not a word of criticism has been heard of a single word spoken or a single act done by a single Supervisor on 66 of the 73 ships, and the only incidents of any consequence are narrowed down to three particularly offensive and aggressive Union organizers and five Supervisors on three ships.

As the Petitioner says, Lee, Babin and Weissflog were directed not to importune the men when on watch, in the mess-hall or the men's sleeping quarters, or to an extent that caused seamen to quit their jobs. A rule of general application imposing such restraints on all Union organizers would have been reasonable. The Examiner so assumed, for he found that the restraints imposed on Lee, Babin and Weissflog were unreasonable solely because "the Respondent had no rule of general application prohibiting either solicitation or talking during working time" (R. 825-6).

That was a manifest error of law. It would have been unreasonable and wholly impracticable to attempt to prevent sailors from talking during working time.

A general rule imposing restraints on all Union organizers like those imposed on only three would have been reasonable but might have aroused antagonisms and caused conflicts. Instead, the restraints were imposed on all the Supervisors by a general rule, which enjoined strict neutrality and non-interference with any Union activities which did not interfere with discipline or proper operation. Necessarily the Supervisors had to decide when discipline and proper operation required some restraint on particular organizers.

The result was that all but three Union organizers were left free to pursue their unionizing efforts at will. No incidents serious enough to be reported to the Respondent and no work stoppages occurred during a ten-weeks' unionizing campaign participated in by professional organizers on 73 ships scattered over the Great Lakes.

That is an amazing fact in proof of the wisdom and effectiveness of Mr. Ferbert's instructions to the Supervisors.

Moreover, he did take the precaution fully to inform the unlicensed seamen of their rights and duties and that no one, neither Supervisors nor Union organizers, must threaten them.

The Petitioner is even forced to argue (Br. p. 131) that that may have been understood as referring only to Union organizers! It is the counterpart of the explicit instructions to the Masters that "There must be no partiality".

Mr. Ferbert was undoubtedly moved by the war emergency to take those precautions as his letter to the men plainly shows (R. 745-6).

The Examiner was fully aware of the fatal gap in the Petitioner's case and undertook to bridge it in characteristic fashion. Referring to what he called the "verbal attacks" of Supervisors, he found:

> "Their coincidence in point of timing with a crucial period of union organization and their occurrence on every ship about which testimony was adduced disclose both a pattern and a design. Whether, standing alone, the verbal attacks assumed a character of coer-

cion so as to remove them from the immunized area of free expression, it is not necessary here to decide. In assessing their full import they must be considered, as they are here, in context with accompanying events which provided the setting—the respondent's entire course of anti-union conduct, including the threats, the acts of intimidation and discrimination, and the restraints imposed upon union organizers, all as outlined above. So viewed, it is found, the supervisors' statements, herein characterized as verbal attacks, constituted an integral part of the respondent's broad pattern of coercive conduct.". (R. 827-8.)

That was another vital error of law.

The very fact that so few incidents occurred during a "crucial period of Union organization for ten weeks" and that the Petitioner was only able to adduce any testimony about a few sporadic incidents on seven ships out of 73 proved the very opposite of pattern and design.

The Examiner found that a few exceptions were the rule.

The Petitioner attempted to excuse the paucity of its evidence on the former review by asserting that many of its witnesses were scattered over the High Seas and unavailable. It was pointed out that that was an admission of the employment by the Union of professional organizers.

It now says that "potential witnesses were scattered and unable to appear" and that their testimony would have been "merely cumulative" (Br. p. 137). It ignores the fact that it had to prove system, "a pattern and a design", "a plan and continuous course of conduct".

It could not substitute for proof an excuse for the lack of it.

The salt-water seamen, the professionals, were not scattered over the High Seas until after the elections were held. It admits that it had "about a year and a half" to procure witnesses. It had the active assistance of the Union which participated in the trial and, of course, knew where its members were. It could have granted itself more time, if needed, to procure the testimony of absent

witnesses. But it made no suggestion of a continuance for the purpose. It has to stand or fall on the case which it made.

Moreover, it had 720 potential witnesses who were friendly to prove a system and planned course of conduct. At least 73 of them were partisans.

It must be presumed that those not called would not have supported its case, but we do not rely on presumptions. We rely on the lack of proof.

2. In his preliminary statement on the former review, the late Mr. Justice Rutledge, speaking for the Court, said that there was "testimony tending to show" three facts, which may have been deemed evidentiary of the ultimate conclusion of fact, not mentioned, which was essential to support the Board's order (337 U. S. 657).

In fact, the Board's ultimate conclusion of fact was based wholly on those three supposed evidentiary facts.

A. *One of them was that certain of the Respondent's licensed personnel expressed to unlicensed personnel bitter hostility to the Union.*

No question of the credibility of witnesses is involved on this review. We assume that the testimony of the Union organizers was true, although it was far outweighed by that of the few Masters, Mates and Engineers involved.

On the whole record, it conclusively appears that such expressions by a few Supervisors in arguments with Union organizers are wholly inadequate to establish a planned and continuous course of coercive conduct or to overcome the force and effect of Mr. Ferbert's strict instructions to the Supervisors, which on this record stand established as a matter of law.

That is so even though we accept at its face the Petitioner's statement of facts at pages 5 to 29 of its brief.

No Union organizer claims that he was caused to relax his unionizing efforts in the slightest respect. No unlicensed seaman claims that he was coerced. The reasonable restraints imposed on three particularly aggressive and

offensive Union organizers were not coercive, and, even if they were, they do not even tend to establish a general course of coercive conduct.

We have already shown that the Petitioner's statement includes incidents of no probative effect whatever on the question of a general course of coercive conduct. It was evidently impelled by the paucity of its evidence even to include alleged statements of Captain Lawless made months after the election as evidence of coercive conduct to influence the election.

The whole record conclusively disproves the other two evidentiary facts, which the learned Justice said there was testimony tending to show and which the Petitioner includes in its statement of coercive acts, and that so far from being coercive the Ferbert letters prove Mr. Ferbert's precautions to insure a fair and free election and to avoid any excuse for a work stoppage, and that Shartle was discharged solely for incompetence.

B. *It was established as a matter of law by the ruling of the Board itself that the Ferbert letters were not coercive in and of themselves and thus were not evidence of otherwise coercive conduct.*

The Board rejected the Examiner's premise that the letters were coercive by finding that they "are not unlawful *per se*", but adopting the Examiner's conclusion from that rejected premise it found that "they constitute an integral and inseparable part of the Respondent's otherwise illegal course of conduct and *when so viewed* they assume a coercive character which is not privileged by the right of free speech" (R. 855—Emphasis supplied).

The Petitioner quotes as findings of the Board itself many of the Examiner's unsound reasons in support of his finding that the letters were coercive, although the Board rejected that finding (Br. pp. 128-133). It says that that was the "context" which the Board "viewed" in deciding that the letters assumed a coercive character.

Counsel has outdone even the Examiner in casuistry and error. "When so viewed" the letters were themselves coercive. The quoted words refer and can only refer to the conclusion of the Examiner that the letters "were an integral and inseparable part of the Respondent's otherwise illegal course of conduct", which the Board adopted, although it rejected the premise on which it was based.

The Petitioner is *in extremis* when it resorts to such casuistry and misstatements. Whatever may be thought of the Board's illogical and circuitous reasoning, it certainly did not find as facts the reasons assigned by the Examiner for his finding that the letters were themselves coercive, which it rejected.

In any possible view, it stands established as matter of law by the Board's own finding that the letters were not in and of themselves coercive or evidence of an otherwise illegal course of conduct. The Board found that they assumed a coercive character only because they were an integral part of otherwise illegal conduct.

It appeared in the *Heinz* case (311 U.S. 514) that the Union had complained to the President of the Company of very serious coercive conduct of a Plant Superintendent and several Foremen, necessarily affecting an election and the organization of a Company Union, and that thereupon he directed them to desist. It was admitted that there was substantial evidence to support the Board's findings. This Court held that it was not enough for the President to stop such conduct when it was brought to his notice, but that having knowledge of it, he should have corrected its harmful effects either by informing the employees of his instructions to their Supervisors or in some other manner.

The facts of that case are so utterly dissimilar to the facts of the instant case that the Examiner did not venture to cite it in support of his ruling, although he must have been familiar with the decisions of this Court in labor

cases and he cited numerous decisions in support of other rulings.

Mr. Ferbert had in the most effective way informed each unlicensed seaman by letter that he was not to be threatened, intimidated or coerced by anyone and that it was his duty as well as his privilege to make up his own mind and to vote accordingly without fear of reprisals or hope of favor.

There was testimony, as this Court said, tending to show that the statements in the letters respecting so-called "rotary hiring" and the freezing of wages during the war emergency were misleading. The Union Vice-President, Lawrenson, supplied it, but he did not testify that they were misrepresentations, as the Examiner found and the Petitioner again states (R. 806, Br. p. 133). Although the Examiner also found that his testimony was uncontradicted (*id.*), it was contradicted by his own admissions on cross-examination (R. 118, 120, 121) and the truth and accuracy of the statements were proved by documentary evidence, the Union Contract (Bd. Ex. 8, R. 772) and by the statute *(Emergency Price Control Act of 1942, c. 26, 56 Stat. 23)*.

Independently of Section 8 of the Taft-Hartley Act, the employer has the right to use fair persuasion. Mr. Ferbert merely stated facts and plainly informed the men of their rights and duties, that their decision would not affect their position with the Company, and that no one must threaten them and appealed to them to be bound by the decision of the majority and to cooperate to achieve the objective for which they were all striving in aid of the war effort.

The Court of Appeals found on a critical analysis of the whole record that there was no evidence to support the finding that the letters were an integral part of a general course of coercive conduct (R. 878) and that the challenged statements were "squarely correct" (R. 879).

The Petitioner concedes, as it did below, that the statute immunizes those letters as far as any enforcement order is concerned (R. 875, Br. p. 136). That suffices, but they

needed no statutory immunity and the Court of Appeals decided independently of the statute that they were truthful and were not coercive.

C. ***There is not a scintilla of probative evidence that Shartle was discharged for Union activity.***

The Petitioner has cited none in its labored effort to prove the contrary (Br. pp. 99-106).

Shartle did not testify to a single fact even tending to show that he was discharged for Union activity, except that when he informed some of his shipmates that he was being fired for incompetence, they assured him that he was not incompetent but must have been discharged for Union activity (R. 173-4).

The Petitioner does not now rely on that testimony (Br. p. 116). It relies rather on its attempt to discredit the Respondent's witnesses (Br. pp. 99-112).

Shartle does not pretend that he ever brought his Union activities to the attention of the Master or First Mate who discharged him. Each testified that he did not know that Shartle was a Union organizer until after his discharge (R. 510, 678) and that he was discharged solely for incompetence (R. 502, 676).

He virtually admits that he carried on his unionizing activities surreptitiously (R. 171).

His incompetence was proved and found, but excused on the ground that he was not properly instructed by the Master and First Mate in order that they might have an excuse to discharge him (R. 837-8). There is not a particle of evidence to support that finding.

The winch incident is admitted by the Petitioner (Br. p. 99). That alone was sufficient ground to discharge him. His incompetence in handling the electric winch might have caused serious, if not fatal, injuries to deck hands but for the prompt intervention of a Mate. The Petitioner now admits his incompetence (Br. p. 20).

He was the only organizer out of 73, the only unlicensed

seaman out of 2,000, who was even alleged to have been discharged for Union activity.

The Petitioner attempted and now attempts to weaken the significance of that very important fact by finding and now asserting that Vogel, who succeeded Shartle as a Union organizer, was also discharged. Vogel and First Mate Dobson differ as to what was said when the latter witnessed a quarrel between Vogel and a seaman over the payment of Union dues (R. 215-6, 508-9). The conclusive fact is that Vogel admits that although the ship was then in port he remained on board and in the Respondent's employ and voluntarily quit at the end of the next round-trip, although the First Mate wanted him to stay on. (R. 224). The Petitioner's treatment of that incident is of a piece with its attempt to prove its charge by captious criticism of the Respondent's witnesses.

Incompetence proved, found and admitted, together with the undisputed testimony of the Supervisors who actually discharged Shartle, can be overcome, not by captious criticisms of the Respondent's witnesses, but only by probative evidence that the discharge was actually for Union activity.

The Examiner found that incompetent, inoffensive and ineffective Shartle was discharged because of his "outstanding position in Union activities aboard the ship" (R. 838), although aggressive Lee, Babin and Weissflog were not discharged, as they should and probably would have been but for Mr. Ferbert's instructions to the Supervisors.

That finding alone justified the denial of enforcement.

It thus stands on the record considered as a whole that the supposed evidentiary facts, which this Court said there was testimony tending to show and on which the ultimate conclusion of the Board was wholly based, were wholly inadequate to support that conclusion and that it is affirmatively established by undisputed and documentary evidence that the Respondent did not plan or engage in a continuous course of coercive conduct to defeat its employees' right of self-organization.

POINT II.

THE EXAMINER AND THE BOARD COMMITTED AT LEAST FIVE GRAVE ERRORS OF LAW.

Each of those errors was vital to the decision and alone justified a denial of enforcement.

1. **The Examiner did not venture to find contrary to undisputed and documentary evidence that strict neutrality was not enjoined on the Supervisors, but he disregarded Mr. Ferbert's instructions solely on the stated ground that they were not communicated to the unlicensed seamen (R. 830).**

There is no evidence and no claim that any officer of the Respondent had the slightest knowledge of a few sporadic incidents on seven out of seventy-three ships scattered over the Great Lakes.

Mr. Ferbert had the right to assume that his instructions would be observed, as indeed they were to an amazing degree; but he did take the pains to inform the unlicensed seamen in unmistakable terms of their right to choose their own representative without fear of reprisal or hope of favor.

2. **The Examiner found that the "coincidence in point of timing" of the so-called "verbal attacks" by Supervisors "with a crucial period of Union organization and their occurrence on every ship about which testimony was adduced disclose both a pattern and a design" (R. 827).**

With partisan witnesses on every ship, both Union organizers and Union members, the Petitioner must be presumed to have tendered all the evidence that it had. The paucity of incidents during a ten weeks' "crucial period of Union organization" and their occurrence on the few ships about which the Petitioner was able to adduce any testimony prove the absence of pattern or design.

The Examiner assigned the best reason he could think of to overcome the fact that no incident that could even be criticized occurred on 66 out of 73 ships during a ten

weeks' organizing campaign, in which imported professional organizers participated.

3. There was not a scintilla of probative evidence in support of the Examiner's finding that Shartle was discharged for Union activity, thereby discouraging membership in the Union and interfering with the employees' rights of self-organization (R. 838-9).

The testimony referred to by this Court as tending to show that fact was the hearsay testimony of Shartle himself that his shipmates so assured him when he informed them that he was being discharged for incompetence (R. 173). The Petitioner has not cited a particle of probative evidence to overcome the undisputed testimony that Shartle was incompetent and was discharged solely for that reason.

4. The Board not only adopted the above errors but independently made one equally serious.

It found contrary to the finding of the Examiner that the Ferbert letters were not illegal *per se*, but that they assumed a coercive character solely from being "an integral and inseparable part of the Respondent's otherwise illegal course of conduct" (R. 855).

That necessarily eliminates the finding of the Examiner as any support for the Board's order, and establishes that the letters were not evidence of the ultimate conclusion on which that order is based.

5. The Examiner found that the otherwise reasonable restraints imposed on Lee, Babin and Weissflog were unreasonable only because "the Respondent had no rule of general application prohibiting either solicitation or talking during working time" (R. 825-6).

The Examiner ruled in effect that no restraints could be imposed on any organizer to maintain discipline and proper operation in the absence of a rule applicable not only to all organizers but to all unlicensed seamen. That was manifest error.

But for that erroneous ruling, the erroneous finding of

the Board itself that the Ferbert letters assumed a coercive character from being an integral part of an otherwise illegal course of conduct, and the finding, without a shred of evidence to support it, that Shartle was discharged for Union activity, there would be nothing in the case that even smacks of coercion.

POINT III.

(Specifically answering Petitioner's Point III)

THE PETITIONER'S ATTACK ON THE DECISION OF THE COURT OF APPEALS IS WHOLLY UNWARRANTED AND ON GROUNDS PRESENTED NEITHER BY THE PETITION NOR BY THE RECORD.

The Court of Appeals did not set aside the Board's order, as stated in the headnote to Petitioner's Point III. It denied enforcement,—a very different matter, as the Petitioner is well aware.

A. *The Court of Appeals did not disregard the law of the case.*

The Petitioner is indeed hard pressed when it resorts to the contention that this Court has already decided the merits of this cause.

It reversed on a point of law not involving the merits, which had not been considered below, and remanded the cause for a consideration of the applicability and effect of the Administrative Procedure Act and the Taft-Hartley Act (337 U.S. 656).

In his preliminary statement of the case, the late Mr. Justice Rutledge said that there was testimony "tending to show" certain evidentiary facts on both sides of the case, without even mentioning the ultimate conclusion of fact to be drawn therefrom. That was quite sufficient for a reversal on a point of law not involving the merits.

In discussing the disposition to be made of the case after disposing of the point of law involved, the learned Justice parenthetically used the phrase "without doubting the existence here of evidence substantial enough under the Wagner Act to warrant the Board's findings". That is

not the way this Court expresses decisions which become the law of the case.

Although the Petitioner attempts to evade it, there cannot be the slightest doubt that the decisive question in this case is whether there is substantial evidence on the record considered as a whole that the Respondent "from on or about the 15th day of December, 1943, to on or about the 17th day of June, 1944, Respondent, through its agents and employees, engaged in a plan and continuous course of conduct" to coerce its employees in the exercise of their rights of self-organization (R. 4).

That is the ultimate question irrespective of whether or not the scope of judicial review has been enlarged by statute.

Whatever may have been in the minds of the Members of the Court, a decision *sub silencio* does not become the law of the case.

Although the Petitioner does not venture to set its argument forth in logical form, it is this:

1. This Court decided on the former appeal that there was substantial evidence under the Wagner Act to support the findings.

2. The scope of review under that Act has not been enlarged by statute.

Ergo, this Court must have decided that there was substantial evidence on the record considered as a whole that the Respondent had engaged in a planned course of coercive conduct to influence the election, although it did not say so.

We challenge both of the premises and maintain that on the record considered as a whole there is no substantial evidence to support the ultimate conclusion of fact, on which the Board's order is based, even under the Wagner Act, and that, if this Court would have decided that there was such evidence, had the point been involved and properly presented, such a decision would have demonstrated a crying need for the enlargement of the scope of review

of the decisions of administrative tribunals in the exercise of judicial power.

It suffices that the Court expressed no such decision. Whatever the individual members may have thought on the presentation then made, the real question involved was whether the Court of Appeals was justified in denying enforcement for unfairness.

We have now had a unanimous decision below based on a thorough review of the whole record and if the prior argument left any erroneous impressions in the minds of the Members of the Court, we respectfully ask for a reconsideration of them.

B. *The Court of Appeals did not substitute its judgment for that of the Board on any "disputed facts".*

It differed with the Board on the conclusion to be drawn from undisputed facts.

Under this subhead the Petitioner cites no instance in which the Court below substituted its judgment for that of the Board on any dispute of fact. There was no such instance.

We have never contended and do not now contend that the Congress has provided for a review *de novo* of the decisions of administrative tribunals.

C. *The Court below did not decide the case on the credibility of witnesses or reject the Board's findings in respect thereof.*

Under this subhead the Petitioner attempts to reargue the question decided in its favor on the former review. Its purpose is not far to seek.

The Court of Appeals decided:

1. Tha the finding that the Ferbert "letters formed an integral part of a general course of coercive conduct" was "supported by no evidence" (R. 878).

2. That "Lawrenson's testimony so far from being uncontradicted, as found by the Examiner, was contradicted

not only by the written Union contract, but by Lawrenson himself" (R. 879).

3. That the testimony respecting the instructions to the Supervisors was undenied and confirmed by letter to the Captains and that the Examiner's refusal to consider them because they were not communicated to the unlicensed seamen "was error as a matter of law" (R. 879).

4. That "Reading the case in the light of the whole record, we conclude that Shartle was discharged for cause and that the finding that he was discharged because of union activity is not supported by reliable, substantial, and probative evidence" (R. 882).

5. That "Based on the record in its complete setting, the other incidents held to constitute a general course of coercive action are at their worst sporadic cases of individual anti-union bias on the part of certain licensed employees. When viewed on the record as a whole, they are cases not of coercion but of mutual tension between aggressive organizers and the officials dealing with them" (R. 883).

6. That "It is undisputed that instructions had been given to the masters to permit organizing to be carried on as long as it did not interfere with discipline or proper operation. It was impossible for a home office to police 73 ships out on the Great Lakes and to frame rules which would take care of every situation. The employer's instruction was reasonable and required the captains to frame and enforce the proper rules. On the whole record the restrictions were justifiable" (R. 884).

7. And in conclusion "We think that to ignore the complete absence of union trouble on 66 ships where the positive instructions were that the rights of the men should be protected and where the basis of the holding against the employer is that it engaged in a general course of anti-union conduct, is to ignore the mandate of the two

statutes that decision shall be based upon 'the record considered as a whole' " (R. 884).

It did say that in view of the fact that Shartle had "denied the incident of the winch, which was found by the Examiner to have taken place * * * it is difficult to understand how Shartle's other testimony could be considered entirely credible".

Anyone who appreciates the imminent dangers involved in that incident will fully agree, but why talk about the credibility of witnesses on an issue on which there was not only no substantial evidence, but no probative evidence at all, not a particle, not even a scintilla, in support of the findings?

True, the Court did say that Lawrenson's testimony was contradicted by himself, though the Examiner found that it was uncontradicted, but that issue was decided on unquestioned documentary evidence and the statute.

True, in a footnote the Court quoted testimony of Seaman McGuinness in flat contradiction of Lee, which the Examiner flagrantly misquoted as supporting Lee, although he himself had elicited it (R. 883). Even the Petitioner felt it important to point out in another context that the Board deemed it prudent to correct that palpable error, or at any rate did so (Br. p. 28).

If judicial opinions are to be tested by the sort of captious criticisms indulged in by the Petitioner, few written by busy Judges would survive the test.

We venture to say that Judge Allen's exposition of the case has rarely been excelled for fairness, clarity, accuracy, thoroughness and cogency.

If the findings were substantial enough under the Wagner Act, it was indeed high time that the scope of judicial review be enlarged.

D. *The Court below did not deny enforcement of the Board's order because of the admission of "incompetent or hearsay evidence".*

Judge Allen did refer to Shartle's hearsay testimony as to the assurances given him by some of his shipmates

when he informed them that he was being discharged for incompetence and in the same context said that the finding was not supported "by reliable, substantial and probative evidence" (R. 882).

The Petitioner does not now claim that that testimony has the slightest probative effect.

In a footnote Judge Allen referred to other hearsay testimony which was admitted over objection and made the basis of important findings (R. *id.*).

We do not discuss that testimony because enforcement was not denied because of its admission.

E. ***Under this subhead with its three subdivisions, the Petitioner ignores the charge and the ultimate conclusion of fact on which the order is based and treats the case as though it were a case of isolated unfair labor practices, yet under the next subhead it admits that the Board found that the acts involved were in accordance with "Company policy" and "an integral part of a broad Company pattern of illegal conduct" (Br. pp. 120, 125-6).***

It surely does not contend that the Supervisors on these Lake freighters determined the Company policy. This point is an obvious attempt to divert attention from the decisive question in the case.

The Petitioner invokes its curious "law of the case" doctrine under this point and says that the question of the Respondent's responsibility "is foreclosed by the decision of this Court".

1. The question of the liability of the Respondent "for the illegal conduct of its ship officers even though it was unaware of and might have disapproved such conduct" does not arise in the instant case.

We have already shown that the facts on which the decision in the *Heinz* case was based are wholly lacking in the instant case (*ante*, p. 21).

That decision was that the Company had not discharged its full duty by merely directing its Supervisors to cease the very serious unfair labor practices in which they had been engaged.

We have no quarrel with the quotation on page 121 of the Petitioner's brief. It recognizes that the "principles of agency or *respondeat superior*" have no application.

In that case Supervisors had not only upbraided employees for attending Union meetings and threatened discharge for joining the Union, but had actively promoted the organization of a plant Union and participated in the enrollment of employees in it (311 U.S. 518), and all the President did on learning of such conduct was to direct the Supervisors to stop it.

If in the instant case Shartle had been discharged for Union activity, he could have been reinstated without loss of pay, even though his discharge was an isolated act and was without the authority or approval of the Respondent. That is an example of what the late Mr. Justice Stone meant by the language quoted by the Petitioner.

The question here is whether there was a planned course of coercive conduct to influence the election. The question of responsibility does not arise until that question is answered in the affirmative.

The question of the Respondent's knowledge or approval of the acts complained of is important on that question. A few isolated acts of Supervisors without its knowledge or approval have a far different aspect than they would have if done with its knowledge or approval.

Not only were the acts complained of in the instant case done without its knowledge, but it had taken affirmative and, as the facts show, very effective measures to assure a free and fair election by explicitly enjoining strict neutrality and non-interference with any Union activities and by plainly informing each unlicensed seaman personally of facts pertinent for him to know and of his right freely to choose his representative without fear or favor from any quarter.

The real question here is whether, in view of those affirmative measures taken by the Respondent, the acts and utterances of a few Supervisors in verbal exchanges with Union organizers constitute substantial evidence of a planned course of coercive conduct to influence the election.

The Petitioner is again hard pressed in comparing the authority of the Masters of Lake freighters with the sovereignty of ship Captains on the High Seas. This point would seem to be answered by the admission in effect under the next point that the acts involved were found by the Board to be pursuant to "Company policy".

2. Under this subhead the Petitioner appears to admit the necessity of showing that the few incidents complained of "were in fact an integral part of a broad Company pattern of illegal interference with the rights of employees".

Here will be found its only argument directly on the point. That is an obvious attempt to minimize, indeed to submerge, the decisive question in the case.

Its argument here is repetitious of assertions made elsewhere on other points and has already been adequately answered. Its main reliance is on the Ferbert letters and it repeats the assertions made elsewhere that the Board found as facts the reasons assigned by the Examiner for his finding that the Ferbert letters were coercive, although it expressly rejected that finding.

We have already exposed the error of those assertions (*ante*, pp. 21, 22).

3. Again the Petitioner completely misjudges the point involved.

It is whether evidence of a few scattered and unrelated incidents of the character involved is substantial evidence on the record considered as a whole of what the Petitioner itself now calls "a broad Company pattern", a designed and planned course of coercive conduct to influence an election on a fleet of 73 ships.

The question is not whether the Company is exculpated by the paucity of the Petitioner's evidence. It is whether on the whole record the Petitioner proved its charge and the ultimate conclusion of fact on which it based its order.

The precise number of the incidents involved and the precise number of ships on which they occurred is not as important as the nature of the incidents, the relations of

the actors, the setting and the circumstances under which they occurred and the paucity of the number in comparison with the whole.

In fact the number has been overstated. The ships of Captain Lawless must be eliminated since as already stated the incidents on them could not possibly have affected the election which had been certified by the Board long before they occurred. Three other ships must be eliminated, including the "Olds", since there is no proof that Shartle was discharged for Union activity and the other incidents claimed to have occurred on those ships were plainly inconsequential.

That leaves Lee, Babin and Weissflog. The restraints imposed on them must be eliminated, both because they were plainly reasonable and because of the manifest error of the Examiner in finding that they were unreasonable only because like restraints were not imposed on all by a general rule.

Lee had a heated argument with Captain Brinker, who had just been informed by two seamen that they were quitting the ship because of Lee.

Babin was ordered to stay out of the engine room by the Chief Engineer.

Weissflog was ejected from the mess hall and the men's sleeping quarters and was reprimanded for returning late to the ship from a leave.

Those incidents were not related.

The very fact that so few such incidents occurred during a ten-weeks' unionizing campaign, participated in by professionals, is proof of the effectiveness of Mr. Ferbert's instructions and, as the result, of the general recognition by the organizers of the fair treatment and liberty of action accorded them.

The Petitioner's case has to be judged by the entire picture presented, involving 73 ships scattered over the Great Lakes, 2,000 unlicensed seamen, including at least 73 Union organizers, of whom many were professionals, and 596 licensed seamen.

The incidents have to be judged by their nature, their setting, the relations of the actors and the circumstances under which they occurred.

So judged, the paucity and the nature of the incidents, about which the Petitioner was able to adduce any testimony, are wholly insufficient to overcome the force and effect of the undisputed and established facts or to prove "a broad Company pattern", a designed and planned course of coercive conduct to defeat the employees' right of self-organization, which was charged and found.

The excuse tendered by the Petitioner for the paucity of its evidence has already been considered. That excuse, even if it were valid, cannot obviate the lack of proof. It was not for the Respondent to prove a negative in the absence of affirmative proof.

It suffices to say of the Court decisions cited under this point that none of them has the slightest application.

POINT IV.

IT IS WHOLLY IMMATERIAL WHETHER REVIEWING COURTS POSSESSED THE INHERENT POWER WHICH THE STATUTES NOW REQUIRE THEM TO EXERCISE.

Certainly the Congress has expressly commanded such courts to review the whole record in determining the sufficiency of the evidence to support the findings of administrative tribunals. It is now admitted that the review provisions of the Administrative Procedure Act and the Taft-Hartley Act are applicable to this enforcement proceeding which was subsequent to the enactment of both statutes.

A review of the whole record is all the Respondent asks in the instant case. It cannot possibly matter then whether reviewing courts already possessed that power, except as bearing on the Petitioner's curious "law of the case" doctrine, which we trust we have disposed of under the preceding point.

However —

POINT V.

THE CONGRESS INTENDED TO AND IN FACT DID BROADEN THE SCOPE OF JUDICIAL REVIEW BY SAID ACTS.

The intent is admitted. That should determine the meaning of the words used to express that intent.

A. *The Administrative Procedure Act.*

Few acts have received more careful or longer consideration both in and out of Congress.

Two volumes, Senate Document No. 8, 77th Cong. 1st Sess. and Senate Document No. 248, 79th Cong. 2nd Sess., give the history of ten years of intensive study of the problem of Administrative Law and Proc dure, culminating in the enactment of that statute in 1946.

In 1937 the President submitted to the Congress the report of the committee appointed by him, saying: "The practice of creating independent regulatory commissions, who perform administrative work in addition to judicial work, threatens to develop a 'fourth branch' of the Government for which there is no sanction in the Constitution" (*id.* No. 248, p. 189).

The Attorney-General appointed a committee to study the problem. Before it reported, the Congress passed the Walter-Logan bill to remedy the evil about which all were concerned, but it was vetoed because that committee had not completed its work.

It submitted its report January 22, 1941. Three of the members, Mr. McFarland, the President of the American Bar Association, Dean Stason, and Mr. Vanderbilt, now Chief Justice of the Supreme Court of New Jersey, submitted "additional views", which were a scholarly exposition of the subject (*id.* No. 8, p. 203).

On the subject of Judicial Review, they said, among other things:

> "The present scope of judicial review is also subject to question in view of one of the prevalent interpretations of the 'substantial evidence' rule set forth

as a measure of judicial review in many important statutes. Under this interpretation, if what is called 'substantial evidence' is found anywhere in the record to support conclusions of fact, the courts are said to be obliged to sustain the decision without reference to how heavily the countervailing evidence may preponderate—unless indeed the stage of arbitrary decision is reached. Under this interpretation, the courts need to read only one side of the case and, if they find any evidence there, the administrative action is to be sustained and the record to the contrary is to be ignored. The courts, of course, should not weigh meticulously every bit of evidence. Indeed, such a requirement would prove a very undesirable burden. But the courts should set aside decisions *clearly* contrary to the *manifest* weight of the evidence. Otherwise, important litigated issues of fact are in effect conclusively determined in administrative decisions based upon palpable error" (Senate Document No. 8, 77th Cong. 1st Sess., pp. 210-211).

Many bill were introduced and there were many committee hearings. Based on all that had been done, and after consultations with interested parties in and out of official positions, companion bills were introduced in both Houses in 1944. That brought forth "a volume of further suggestions", with the result that a simplified and revised bill was introduced in January, 1945.

The House held hearings at which Mr. McFarland was heard (Senate Document No. 248, 79th Cong. 2nd Sess. pp. 72-86). Dean Stason was heard by the Senate in 1941. Administrative agencies were asked to submit their views. Further comments were received on the revised text, and, following further discussions, the Judiciary Committee of the Senate drafted a bill which was reported by its Chairman, Senator McCarran (*id.* No. 248, pp. 190-1).

In the course of that report, the following colloquy occurred between Senator George and the Chairman of the Committee:

"Mr. George. Mr. President, will the Senator yield?

"Mr. McCarran. I yield.

"Mr. George. The courts have many times held that if there is any evidence to sustain the finding of an administrative board under the statute, the courts have no power to intervene. If this bill should become a law would that rule, as heretofore construed by the courts, remain in effect?

"Mr. McCarran. The courts have given various constructions. The courts, in reviewing an order, are governed by the provisions of section 10 (e), which states the substantial-evidence rule. In other words, in some instances the courts have held that there must be substantial evidence. We are saying that there must be probative evidence of a substantive nature, and that even though the commission or bureau may take hearsay evidence in its hearings, it must have some probative evidence to sustain its finding.

"Mr. George. The point I wish to raise is that some of the acts of Congress, particularly those enacted in recent years, have led the courts to hold—and they so hold—that if there be any evidence to sustain the finding of a board or agency, the court has no power to interfere with it.

"Mr. McCarran. I would put it in this way—

"Mr. George. Would the enactment of this bill require some substantial or probative evidence to support such a finding?

"Mr. McCarran. Yes.

"Mr. George. Take the labor-relations cases. Senators are familiar with them. The circuit courts have frequently complained against what the Labor Relations Board did, but have said, 'We are powerless to interfere with it.' Would this bill change that rule, if the court were of the opinion that there was no probative evidence?

"Mr. McCarran. Yes; it would change that rule.

"Mr. George. I am pleased to hear it.

"Mr. McCarran. I thank the Senator."
(*id.* No. 248, pp. 321-2)

No branch of the subject received more consideration than that of "Judicial Review", if as much. Dean Stason's

able discussion before a Senate Committee in 1941 dealt wholly with that subject and completely demonstrated the need to expand the scope of judicial review *(Hearings on Administrative Procedure before a Subcommittee of the Committee on the Judiciary, United States Senate, 77th Cong. 1st Sess. on S. 674, S. 675 and S. 918, Part 3, pp. 1350-1360)*. But the Petitioner argues that all of that work merely resulted in the vain use of words and that the very courts, to whose laments on their lack of power to correct the grave abuses of judicial power by administrative agencies reference was made in the above colloquy, have lately said that they already had the power which the Congress has now required them to exercise.

The Petitioner quotes excerpts from the statements of Mr. McFarland and Dean Stason before the House and Senate Committees respectively.

Their whole statements are entirely consistent with what they and Judge Vanderbilt said in the above quotation from their report. The question was not how the term "substantial evidence" should be interpreted, but how it was being interpreted in actual practice. The statement of Dean Stason made in 1941 directly after the submission of the Attorney-General's report, together with the statement of Mr. McFarland in 1945 after the final revision of the bill, plainly show the intention of the Congress in requiring a review of the "whole record".

They had said that under one of the prevalent interpretations of substantial evidence "if what is called substantial evidence is found anywhere in the record to support conclusions of fact, the Courts are said to be obliged to sustain the decision without reference to how heavily the countervailing evidence may preponderate" (*id.* No. 8, pp. 210-211).

That was precisely the evil which the Act was intended to correct. Both the Senate and House reports said: "The requirement of review upon 'the whole record' means that the courts may not look only to the case presented by one party, since other evidence may weaken or even indisputably destroy that case" (*id.* No. 248, pp. 214, 280).

The "countervailing" evidence in the instant case "indisputably" destroys the probative effect on the controlling issue in the case of the testimony which this Court said tended to show certain facts, which, in fact, were only evidentiary.

The importance which even the Petitioner attaches to the "Additional Views and Recommendations" of the learned authors of the supplemental report is a recognition of the very great weight given that report by the Congress.

The context plainly shows that the recommendation that the courts set aside decisions "clearly contrary to the manifest weight of the evidence" did not mean that the courts should review the decisions of administrative tribunals *de novo* or decide on the mere weight of the evidence, as the Petitioner seems to suppose.

The Congress adopted that recommendation by requiring the courts to review the "whole record" in determining the sufficiency of the evidence without using words which might possibly encourage reviews *de novo*.

That required reviewing courts to decide according to countervailing evidence which preponderates over evidence "clearly contrary to the manifest weight of the evidence".

If there could be the slightest doubt of that intention, it is set at rest by the Taft-Hartley Act, the review provisions of which were plainly intended to strengthen those of the Administrative Procedure Act.

B. *The Taft-Hartley Act.*

Subsections (b), (c) and (e) of Section 10 of that Act are the important provisions upon which we rely.

Subsection (b) requires decisions to be based on legal evidence.

Subsection (c) requires the Board to act on the preponderating testimony.

Subsection (e) provides that the findings of the Board are conclusive if supported by "substantial evidence on the record considered as a whole".

Manifestly those three sub-sections of the same Section must be construed together.

The Petitioner says that (b) and (c) relate to the proceedings of the Board which had already been taken and that the procedural provisions of the Act are not retroactive. We rely on them only as explanatory of subsections (e) and (f) of the same section.

A learned Judge has said that those express commands were mere cautions (*Eastern Coal Co. v. N.L.R.B.* 176 F. 2d 131, 134). The express words of the statute and its entire legislative history refute that *dictum*.

This is an enforcement proceeding subsequent to the enactment of both statutes.

The Court below did not set "aside the Board's order" as the petitioner asserts for an obvious purpose (Br. p. 92). It denied enforcement (R. 884).

We rely on sub-sections (b) and (c) of Section 10 of the Act only as explanatory of the meaning of "substantial evidence on the record considered as a whole" in sub-section (e) of the same Section.

Surely the Congress could not have intended the Courts to accept less probative evidence than is required of the Board. So construed those words mean and can only mean the preponderating legal evidence in the whole record, unless the long and laborious labors of the Congress were entirely vain, as the Petitioner contends.

The House Conference Report (Report No. 510, 80th Cong. 1st Sess.) plainly shows that the Congress adopted the views of Messrs. McFarland, Stason and Vanderbilt on that subject.

We have shown under Point III, specifically answering Petitioner's Point III, that the Court below did not base its decision on conflicting testimony, did not substitute its judgment for that of the Board on "disputed facts", and did not deny enforcement because the Examiner had admitted incompetent and hearsay testimony, as the Petitioner contends in characteristic fashion, in attempting to divert attention from the decisive question in the case.

We maintain that in the instant case it is established as matter of law by the "whole record" that the testimony, which Mr. Justice Rutledge said "tended to show" certain evidentiary facts, has no probative force or effect on the

ultimate conclusion of fact, on which the Board's order is based, and that the undisputed and documentary evidence affirmatively establishes as matter of law that the Respondent did not engage in a planned and continuous course of coercive conduct to defeat its employees' right of self-organization, as charged and found by the Petitioner.

Indeed the instant case precisely illustrates in unusually striking fashion the distinction which the Congress intended to make between the mere weight of evidence and "substantial evidence on the record considered as a whole", meaning as we say the preponderating legal evidence.

The testimony of a few Union organizers may have been some, and we may even assume substantial, evidence that a few Supervisors were personally hostile to the Union and so expressed themselves in verbal conflicts or arguments with the organizers, but if it had any probative effect on the ultimate conclusion of fact necessary to support the order, such effect is destroyed by the undisputed and documentary evidence conclusively proving that the Respondent did not engage in any planned course of coercive conduct to influence the election.

Union Vice President Lawrenson's testimony may have been some evidence that the statements in the Ferbert letters respecting "rotary hiring" and the freezing of wages were misleading, though his admissions on cross-examination destroyed its substantiality, if it had any, and its probative effect, if it otherwise had any, was utterly destroyed by the Union contract and the statute which proved the complete truth of the statements.

Shartle's hearsay testimony of the friendly assurances given him by some of his shipmates, when he informed them that he was being discharged for incompetence, may be considered by some as some evidence that he was discharged for Union activity, but its very slight evidentiary value, if any, is utterly destroyed by the established fact that his incompetence was a menace to the safety and even the lives of other seamen and by the undisputed testimony of those who discharged him.

Thus the probative effect of the evidence on which the Petitioner wholly relies is utterly and completely destroyed.

Moreover it appears on the whole record in the instant case as matter of law that, being engaged in transporting iron ore vitally needed for the war effort which might have been seriously impeded by a work stoppage, Mr. Ferbert gave the Supervisors explicit instructions, both verbally and by letter, to maintain strict impartiality and not to interfere with any Union activities which did not interfere with discipline or proper operation, and that he took the further precaution to write letters personally to all unlicensed seamen, which the Board itself found were not in and of themselves unlawful, i.e., coercive, and in which he plainly informed them of their rights and that no one must threaten them, and appealed to them to accept the decision of the majority and to cooperate in the attainment of the objective in aid of the war effort, for which they were all striving.

The absence of any evidence of the slightest deviation from those instructions on all but a very few ships, the paucity of the incidents about which any evidence was adduced, we say about which any evidence could be adduced, the setting and surrounding circumstances of the few sporadic incidents complained of, and all the undisputed and established facts in the case confirm the conclusion to be drawn from the two cogent facts established as matter of law as above.

Furthermore, the vital findings are all vitiated by manifest errors of law.

The Petitioner appears to say that the Congress intended to expand the scope of review but did not know how to do so. It admits that the "House Conference Report" plainly shows an intention that the Courts should determine whether the requirements of sub-sections (b), (c) and (e) of Section 10 of the Taft-Hartley Act "have been met".

That was the report of the bill in the form in which it was enacted. It has much greater significance than statements made in debate even by the sponsors. But the Petitioner maintains that the members of the Committee and Senator Taft, the sponsor in the Senate, did not know what they were talking about.

For the convenience of the Court, we quote the pertinent statements more fully:

"(6) The House bill provided, in section 10 (b), that proceedings before the Board should be conducted, so far as practicable, in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure. The Senate amendment retained the language of the present act, which provides that the rules of evidence prevailing in the courts shall not be controlling. The reason for this provision in the House bill was explained in full in the committee report on the bill. If the Board is required, so far as practicable, to act only on legal evidence, the substitution, for example, of assumed 'expertness' for evidence will no longer be possible. The conference agreement in section 10 (c) contains this provision of the House bill.

"(7) In section 10 (c) the House bill provided that the Board should base its decisions upon the 'weight of the evidence'. The Senate amendment retained the present language of the act, permitting the Board to rest its orders upon 'all the testimony taken'. The conference agreement provides that the Board shall act only on the 'preponderance' of the testimony—that is to say, on the weight of the credible evidence. Making the 'preponderance' test a statutory requirement will, it is believed, have important effects. For example, evidence could not be considered as meeting the 'preponderance' test merely by the drawing of 'expert' inferences therefrom, where it would not meet that test otherwise. Again, the Board's decisions should show on their face that the statutory requirement has been met—they should indicate an actual weighing of the evidence, setting forth the reasons for believing this evidence and disbelieving that, for according greater weight to this testimony than to that, for drawing this inference rather than that. Immeasurably increased respect for decisions of the Board should result from this provision.

* * * * *

"(14) Under the language of section 10 (e) of the present act, findings of the Board, upon court review of Board orders, are conclusive 'if supported by evi-

dence'. By reason of this language, the courts have, as one has put it, in effect 'abdicated' to the Board (*N.L.R.B.* v. *Standard Oil Company,* 138 Fed. (2d) 885 (1943). See also: *Wilson & Co.* v. *N.L.R.B.* (126 Fed. (2d) 114 (1942), *N.L.R.B.* v. *Columbia Products Corp.* (141 Fed. (2d) 687 (1944), *N.L.R.B.* v. *Union Pacific Stages, Inc.* (99 Fed. (2d) 153). In many instances deference on the part of the courts to specialized knowledge that is supposed to inhere in administrative agencies has led the courts to acquiesce in decisions of the Board, even when the findings concerned mixed issues of law and of fact (*N.L.R.B.* v. *Hearst Publications, Inc.,* 322 U.S. 111; *N.L.R.B.* v. *Packard Motor Car Co.,* decided March 10, 1947), or when they rested only on inferences that were not, in turn, supported by facts in the record (*Republic Aviation* v. *N.L.R.B.,* 324 U.S. 793; *Le Tourneau Company* v. *N.L.R.B.,* 324 U.S. 793).

"As previously stated in the discussion of amendments to section 10 (b) and section 10 (c), by reason of the new language concerning the rules of evidence and the preponderance of the evidence, presumed expertness on the part of the Board in its field can no longer be a factor in the Board's decisions. While the Administrative Procedure Act is generally regarded as having intended to require the courts to examine decisions of administrative agencies far more critically than has been their practice in the past, by reason of a conflict of opinion as to whether it actually does so, a conflict that the courts have not resolved, there was included, both in the House bill and the Senate amendment, language making it clear that the act gives to the courts a real power of review.

"The House bill, in section 10 (e), provided that the Board's findings of fact should be conclusive unless it appeared to the reviewing court (1) that the findings were against the manifest weight of the evidence or (2) that they were not supported by substantial evidence.

"The Senate amendment provided that the Board's findings with respect to questions of fact should be conclusive if supported by substantial evidence on the record considered as a whole. The provisions of section 10 (b) of the conference agreement insure the Board's receiving only legal evidence, and section 10 (c) insures its deciding in accordance with the pre-

ponderance of the evidence. These two statutory requirements in and of themselves give rise to questions of law which the courts will hereafter be called upon to determine — whether the requirements have been met. This, in conjunction with the language of the Senate amendment with respect to the Board's findings of fact — language which the conference agreement adopts — will very materially broaden the scope of the courts' reviewing power. This is not to say that the courts will be required to decide any case de novo themselves weighing the evidence, but they will be under a duty to see that the Board observes the provisions of the earlier sections that it does not infer facts that are not supported by evidence or that are not consistent with evidence in the record, and that it does not concentrate on one element of proof to the exclusion of others without adequate explanation of its reasons for disregarding or discrediting the evidence that is in conflict with its findings. The language also precludes the substitution of expertness for evidence in making decisions. It is believed that the provisions of the conference agreement relating to the courts' reviewing power will be adequate to preclude such decisions as those in *N.L.R.B.* v. *Nevada Consol. Copper Corp.* (316 U.S. 105) and in the *Wilson, Columbia Products, Union Pacific Stages, Hearst, Republic Aviation,* and *LeTourneau,* etc., cases, supra, without unduly burdening the courts. The conference agreement therefore carries the language of the Senate amendment into section 10 (e) of the amended act." *(Vol. 1, Legislative History of the Labor Management Relations Act, 1947, pp. 557-560).*

In the Senate, Senator Taft, the Chairman of the Committee on Labor and Public Welfare, in submitting the majority report of the Committee had said:

"The bill makes a change in the provision regarding court review of National Labor Relations Board decisions. The present rule in the law is simply that any decision supported by evidence shall be final as to the facts, and the result has been that as a practical matter it is almost impossible for a court to reverse the National Labor Relations Board.

"Under this proposal, it is said that the finding of the Board with respect to questions of fact, if sup-

ported by substantial evidence on the record considered as a whole, shall be conclusive.

"In the first place, the evidence must be substantial; in the second place, it must still look substantial when viewed in the light of the entire record. That does not go so far as saying that a decision can be reversed on the weight of the evidence. It does not go quite so far as the power given to a circuit court of appeals to review a district-court decision, but it goes a great deal further than the present law, and gives the court greater opportunity to reverse an obviously unjust decision on the part of the National Labor Relations Board." (Vol. 2 *id.* p. 1014.)

The Petitioner accepts the definition of "substantial evidence on the record considered as a whole" as evidence which not only is itself substantial but still looks substantial "when viewed in the light of the entire record".

It applies equally to "substantial" evidence on a "review of the whole record".

We know of no better definition in plain and simple words of "preponderating" evidence.

The conference accepted the Senate provision of Section 10 (e) in respect to which Senator Taft had made that concededly accurate statement and also the House provisions of Sections (b) and (c) requiring decisions to be based on the preponderating legal evidence.

Plainly, those three subdivisions thus tied together "very materially" broadened "the scope of the Court's reviewing powers", as the Conference Report had said.

The net effect of the compromise was that decisions of reviewing courts as well as those of the Board have to be based on the "preponderating legal evidence" rather than on the mere weight of evidence. Thus, the risk of reviews *de novo* was avoided.

Evidence which is "substantial" and still looks substantial "when viewed in the light of the entire record" would seem to be preponderating evidence even if the bill finally agreed to had not expressly required decisions of the Board to be based on the preponderating testimony. Mani-

festly, "substantial evidence on the record considered as a whole" could not have been intended to mean less.

We respectfully ask for an affirmance of the unanimous decision below.

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